

# IDAHO ADMINISTRATIVE BULLETIN

October 3, 2012 -- Volume 12-10

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# IDAHO ADMINISTRATIVE BULLETIN

## Table of Contents

October 3, 2012 -- Volume 12-10

<b>PREFACE</b> .....	12
<b>IDAPA 01 - BOARD OF ACCOUNTANCY</b>	
01.01.01 - Idaho Accountancy Rules	
Docket No. <b>01-0101-1201</b>	
Notice of Rulemaking - Proposed Rule.....	22
<b>IDAPA 02 - DEPARTMENT OF AGRICULTURE</b>	
02.02.14 - Rules for Weights and Measures	
Docket No. <b>02-0214-1201</b>	
Notice of Rulemaking - Adoption of Pending Rule .....	24
02.03.03 - Rules Governing Pesticide and Chemigation Use and Application	
Docket No. <b>02-0303-1201</b>	
Notice of Rulemaking - Proposed Rule.....	25
02.04.19 - Rules Governing Domestic Cervidae	
Docket No. <b>02-0419-1201</b>	
Notice of Rulemaking - Proposed Rule.....	28
02.04.21 - Rules Governing the Importation of Animals	
Docket No. <b>02-0421-1201</b>	
Notice of Rulemaking - Proposed Rule.....	30
02.06.12 - Rules Pertaining to the Idaho Fertilizer Law	
Docket No. <b>02-0612-1201</b>	
Notice of Rulemaking - Adoption of Pending Rule .....	35
02.06.13 - Rules Relating to Rapeseed Production and Establishment of Rapeseed Districts In the State of Idaho	
Docket No. <b>02-0613-1201</b>	
Notice of Rulemaking - Proposed Rule.....	36
02.06.14 - Rules Governing Annual Bluegrass ( <i>Poa annua</i> )	
Docket No. <b>02-0614-1201</b>	
Notice of Rulemaking - Proposed Rule.....	39
02.06.16 - Rules Governing Honey Standards	
Docket No. <b>02-0616-1201 (New Chapter)</b>	
Notice of Rulemaking - Proposed Rule.....	41
02.06.31 - Noxious Weed Free Forage and Straw Certification Rules	
Docket No. <b>02-0631-1201</b>	
Notice of Rulemaking - Proposed Rule.....	46
02.06.33 - Organic Food Product Rules	
Docket No. <b>02-0633-1201 (Fee Rule)</b>	
Notice of Rulemaking - Proposed Rule.....	56
02.06.35 - Rules Governing Rough Bluegrass ( <i>Poa trivialis</i> )	
Docket No. <b>02-0635-1201</b>	
Notice of Rulemaking - Proposed Rule.....	61

*02.06.41 - Rules Pertaining to the Idaho Soil and Plant Amendment Act of 2001*  
 Docket No. **02-0641-1201**  
 Notice of Rulemaking - Adoption of Pending Rule .....63

**IDAPA 03 - STATE ATHLETIC COMMISSION**  
*03.01.01 - Rules of the State Athletic Commission*  
 Docket No. **03-0101-1201 (Fee Rule)**  
 Notice of Rulemaking - Proposed Rule.....64

**IDAPA 06 - BOARD OF CORRECTION**  
*06.01.01 - Rules of the Board of Correction*  
 Docket No. **06-0101-1202**  
 Notice of Proclamation of Rulemaking .....71

**IDAPA 07 - DIVISION OF BUILDING SAFETY**  
*07.02.03 - Rules Governing Permit Fee Schedule*  
 Docket No. **07-0203-1201**  
 Notice of Rulemaking - Proposed Rule.....77

*07.02.04 - Rules Governing Plumbing Safety Inspections*  
 Docket No. **07-0204-1201**  
 Notice of Rulemaking - Proposed Rule.....81

*07.02.06 - Rules Concerning Uniform Plumbing Code*  
 Docket No. **07-0206-1201**  
 Notice of Rulemaking - Proposed Rule.....83

*07.03.01 - Rules of Building Safety*  
 Docket No. **07-0301-1201**  
 Notice of Rulemaking - Proposed Rule.....96

Docket No. **07-0301-1202**  
 Notice of Rulemaking - Proposed Rule.....100

*07.03.12 - Rules Governing Manufactured or Mobile Home Installations*  
 Docket No. **07-0312-1201 (Fee Rule)**  
 Notice of Rulemaking - Proposed Rule.....104

*07.07.01 - Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems*  
 Docket No. **07-0701-1201**  
 Notice of Rulemaking - Temporary and Proposed Rule .....108

Docket No. **07-0701-1202**  
 Notice of Rulemaking - Proposed Rule.....111

**IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION**  
*08.01.10 - Idaho College Work Study Program*  
 Docket No. **08-0110-1201**  
 Notice of Rulemaking - Proposed Rule.....115

*08.01.11 - Registration of Post-Secondary Educational Institutions and Proprietary Schools*  
 Docket No. **08-0111-1201**  
 Notice of Rulemaking - Proposed Rule.....119

*08.01.14 - Idaho Rural Physician Incentive Program*  
 Docket No. **08-0114-1201 (Chapter Repeal)**  
 Notice of Rulemaking - Temporary and Proposed Rule .....127

<i>08.02.02 - Rules Governing Uniformity</i>	
Docket No. <b>08-0202-1203</b>	
Notice of Rulemaking - Proposed Rule.....	128
Docket No. <b>08-0202-1204</b>	
Notice of Rulemaking - Proposed Rule.....	130
Docket No. <b>08-0202-1205</b>	
Notice of Rulemaking - Proposed Rule.....	140
Docket No. <b>08-0202-1206</b>	
Notice of Rulemaking - Proposed Rule.....	148
<i>08.02.03 - Rules Governing Thoroughness</i>	
Docket No. <b>08-0203-1205</b>	
Notice of Rulemaking - Proposed Rule.....	155
Docket No. <b>08-0203-1206</b>	
Notice of Rulemaking - Proposed Rule.....	159
<i>08.02.04 - Rules Governing Public Charter Schools</i>	
Docket No. <b>08-0204-1201</b>	
Notice of Rulemaking - Temporary and Proposed Rule .....	163
<i>08.03.01 - Rules of the Public Charter School Commission</i>	
Docket No. <b>08-0301-1201</b>	
Notice of Rulemaking - Temporary and Proposed Rule .....	178
<b>IDAPA 09 - DEPARTMENT OF LABOR</b>	
<i>09.01.04 - Unemployment Insurance Benefit Fraud and Overpayment Rules</i>	
Docket No. <b>09-0104-1201</b>	
Notice of Rulemaking - Adoption of Pending Rule .....	186
<i>09.01.30 - Unemployment Insurance Benefits Administration Rules</i>	
Docket No. <b>09-0130-1201</b>	
Notice of Rulemaking - Adoption of Pending Rule .....	187
<i>09.01.35 - Unemployment Insurance Tax Administration Rules</i>	
Docket No. <b>09-0135-1201</b>	
Notice of Rulemaking - Adoption of Pending Rule .....	188
<b>IDAPA 11 - IDAHO STATE POLICE</b>	
<i>11.11.01 - Rules of the Idaho Peace Officer Standards and Training Council</i>	
Docket No. <b>11-1101-1201</b>	
Notice of Rulemaking - Adoption of Pending Rule .....	189
Docket No. <b>11-1101-1202</b>	
Notice of Rulemaking - Proposed Rule.....	190
<i>11.11.02 - Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Detention Officers</i>	
Docket No. <b>11-1102-1201</b>	
Notice of Rulemaking - Proposed Rule.....	197
<i>11.11.03 - Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Probation Officers</i>	
Docket No. <b>11-1103-1201</b>	
Notice of Rulemaking - Proposed Rule.....	201

*11.11.04 - Rules of the Idaho Peace Officer Standards and Training Council for Correction Officers and Adult Probation and Parole Officers*  
 Docket No. **11-1104-1201**  
 Notice of Rulemaking - Proposed Rule.....205

*11.11.06 - Rules of the Idaho Peace Officer Standards and Training Council for Misdemeanor Probation Officers*  
 Docket No. **11-1106-1201**  
 Notice of Rulemaking - Proposed Rule.....209

**IDAPA 12 - DEPARTMENT OF FINANCE**

*12.01.10 - Rules Pursuant to the Idaho Residential Mortgage Practices Act*  
 Docket No. **12-0110-1201**  
 Notice of Rulemaking - Proposed Rule.....211

**IDAPA 13 - IDAHO FISH AND GAME COMMISSION**

*13.01.02 - Rules Governing Public Safety*  
 Docket No. **13-0102-1201**  
 Notice of Rulemaking - Proposed Rule.....214

*13.01.04 - Rules Governing Licensing*  
 Docket No. **13-0104-1201**  
 Notice of Rulemaking - Temporary and Proposed Rule .....217

Docket No. **13-0104-1202**  
 Notice of Rulemaking - Proposed Rule.....222

*13.01.07 - Rules Governing the Taking of Upland Game Animals*  
 Docket No. **13-0107-1201**  
 Notice of Rulemaking - Proposed Rule.....227

*13.01.08 - Rules Governing the Taking of Big Game Animals in the State of Idaho*  
 Docket No. **13-0108-1201**  
 Notice of Rulemaking - Temporary and Proposed Rule .....229

Docket No. **13-0108-1202**  
 Notice of Rulemaking - Temporary and Proposed Rule .....233

Docket No. **13-0108-1203**  
 Notice of Rulemaking - Temporary and Proposed Rule .....241

Docket No. **13-0108-1204**  
 Notice of Rulemaking - Proposed Rule.....247

Docket No. **13-0108-1205**  
 Notice of Rulemaking - Proposed Rule.....250

*13.01.09 - Rules Governing the Taking of Game Birds in the State of Idaho*  
 Docket No. **13-0109-1201**  
 Notice of Rulemaking - Temporary and Proposed Rule .....256

Docket No. **13-0109-1202**  
 Notice of Rulemaking - Temporary and Proposed Rule .....260

Docket No. **13-0109-1203**  
 Notice of Rulemaking - Proposed Rule.....263

Docket No. **13-0109-1204**  
 Notice of Rulemaking - Proposed Rule.....268

*13.01.16 - The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals*  
 Docket No. **13-0116-1201**  
 Notice of Rulemaking - Temporary and Proposed Rule .....270

*13.01.17 - Rules Governing the Use of Bait for Taking Big Game Animals*  
 Docket No. **13-0117-1201**  
 Notice of Rulemaking - Temporary and Proposed Rule .....274

**IDAPA 15 - OFFICE OF THE GOVERNOR  
 MILITARY DIVISION - BUREAU OF HOMELAND SECURITY**

*15.06.03 - Public Safety Communications Rules*  
 Docket No. **15-0603-1201 (Fee Rule - New Chapter)**  
 Notice of Rulemaking - Proposed Rule.....280

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

*16.03.04 - Rules Governing the Food Stamp Program in Idaho*  
 Docket No. **16-0304-1201**  
 Notice of Rulemaking - Temporary and Proposed Rule .....287

Docket No. **16-0304-1202**  
 Notice of Rulemaking - Temporary and Proposed Rule .....289

*16.03.05 - Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)*  
 Docket No. **16-0305-1201**  
 Notice of Rulemaking - Proposed Rule.....295

Docket No. **16-0305-1202**  
 Notice of Rulemaking - Proposed Rule.....297

*16.03.09 - Medicaid Basic Plan Benefits*  
 Docket No. **16-0309-1205**  
 Notice of Rulemaking - Proposed Rule.....300

Docket No. **16-0309-1206**  
 Notice of Rulemaking - Proposed Rule.....314

*16.03.10 - Medicaid Enhanced Plan Benefits*  
 Docket No. **16-0310-1201**  
 Notice of Rulemaking - Proposed Rule.....316

Docket No. **16-0310-1202**  
 Notice of Rulemaking - Temporary and Proposed Rule .....321

Docket No. **16-0310-1203**  
 Notice of Rulemaking - Proposed Rule.....356

Docket No. **16-0310-1205**  
 Notice of Rulemaking - Temporary and Proposed Rule .....411

*16.04.02 - Idaho Telecommunication Service Assistance Program Rules*  
 Docket No. **16-0402-1201**  
 Notice of Rulemaking - Temporary and Proposed Rule .....427

**IDAPA 17 - INDUSTRIAL COMMISSION**

*17.02.09 - Medical Fees*  
 Docket No. **17-0209-1201**  
 Notice of Rulemaking - Proposed Rule.....431

**IDAPA 20 - DEPARTMENT OF LANDS**

20.02.01 - Rules Pertaining to the Idaho Forest Practices Act Docket No. <b>20-0201-1201</b> Notice of Rulemaking - Proposed Rule.....	439
20.03.14 - Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases Docket No. <b>20-0314-1201</b> Notice of Rulemaking - Proposed Rule.....	456
20.03.15 - The Issuance of Geothermal Resource Leases Docket No. <b>20-0315-1201</b> Notice of Rulemaking - Proposed Rule.....	466

**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. <b>22-0101- 1201</b> Notice of Rulemaking - Proposed Rule.....	483
22.01.02 - Rules of the Board of Medicine for the Registration of Externs, Interns, and Residents Docket No. <b>22-0102-1201 (Fee Rule)</b> Notice of Rulemaking - Proposed Rule.....	488
22.01.03 - Rules for the Licensure of Physician Assistants Docket No. <b>22-0103-1201 (Fee Rule)</b> Notice of Rulemaking - Proposed Rule.....	493
22.01.11 - Rules for Licensure of Respiratory Therapists and Permitting of Polysomnographers in Idaho Docket No. <b>22-0111-1201</b> Notice of Rulemaking - Proposed Rule.....	496
22.01.12 - Rules Relating to Health Care Workers Docket No. <b>22-0112-1201 (Chapter Repeal)</b> Notice of Rulemaking - Proposed Rule.....	505
22.01.13 - Rules for the Licensure of Dietitians Docket No. <b>22-0113-1201 (Fee Rule)</b> Notice of Rulemaking - Proposed Rule.....	506
22.01.14 - Rules Relating to Complaint Investigation Docket No. <b>22-0114-1201</b> Notice of Rulemaking - Proposed Rule.....	510

**IDAPA 23 - BOARD OF NURSING**

23.01.01 - Rules of the Idaho Board of Nursing Docket No. <b>23-0101-1201</b> Notice of Rulemaking - Proposed Rule.....	516
Docket No. <b>23-0101-1202</b> Notice of Rulemaking - Proposed Rule.....	529

**IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

24.01.01 - Rules of the Board of Architectural Examiners Docket No. <b>24-0101-1201</b> Notice of Rulemaking - Proposed Rule.....	543
---	-----

24.04.01 - *Rules of the Idaho Board of Cosmetology*  
 Docket No. **24-0401-1201 (Fee Rule)**  
 Notice of Rulemaking - Proposed Rule.....547

24.06.01 - *Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants*  
 Docket No. **24-0601-1201**  
 Notice of Rulemaking - Proposed Rule.....551

24.10.01 - *Rules of the State Board of Optometry*  
 Docket No. **24-1001-1201**  
 Notice of Rulemaking - Proposed Rule.....557

24.12.01 - *Rules of the Idaho State Board of Psychologist Examiners*  
 Docket No. **24-1201-1201**  
 Notice of Rulemaking - Proposed Rule.....566

24.14.01 - *Rules of the State Board of Social Work Examiners*  
 Docket No. **24-1401-1201**  
 Notice of Rulemaking - Proposed Rule.....569

24.15.01 - *Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists*  
 Docket No. **24-1501-1201**  
 Notice of Rulemaking - Proposed Rule.....580

24.17.01 - *Rules of the State Board of Acupuncture*  
 Docket No. **24-1701-1201**  
 Notice of Rulemaking - Proposed Rule.....586

24.23.01 - *Rules of the Speech and Hearing Services Licensure Board*  
 Docket No. **24-2301-1201**  
 Notice of Rulemaking - Proposed Rule.....591

24.25.01 - *Rules of the Idaho Driving Businesses Licensure Board*  
 Docket No. **24-2501-1201**  
 Notice of Rulemaking - Proposed Rule.....598

24.27.01 - *Rules of the Idaho State Board of Massage Therapy*  
 Docket No. **24-2701-1201 (Fee Rule - New Chapter)**  
 Notice of Rulemaking - Proposed Rule.....601

**IDAPA 25 - IDAHO OUTFITTERS AND GUIDES LICENSING BOARD**

25.01.01 - *Rules of the Idaho Outfitters and Guides Licensure Board*  
 Docket No. **25-0101-1201**  
 Notice of Intent to Promulgate Rules - Negotiated Rulemaking.....614

Docket No. **25-0101-1202**  
 Notice of Rulemaking - Temporary and Proposed Rule .....617

**IDAPA 27 - BOARD OF PHARMACY**

27.01.01 - *Rules of the Idaho State Board of Pharmacy*  
 Docket No. **27-0101-1201**  
 Notice of Rulemaking - Proposed Rule.....621

Docket No. **27-0101-1202**  
 Notice of Rulemaking - Proposed Rule.....635

Docket No. **27-0101-1203**  
 Notice of Rulemaking - Proposed Rule.....653



27.01.01 - <i>Rules of the Idaho State Board of Pharmacy</i>	
Docket No. <b>27-0101-1204</b>	
Notice of Rulemaking - Proposed Rule.....	660
Docket No. <b>27-0101-1205 (Fee Rule)</b>	
Notice of Rulemaking - Proposed Rule.....	665
Docket No. <b>27-0101-1206</b>	
Notice of Rulemaking - Adoption of Temporary Rule .....	680
<b>IDAPA 28 - IDAHO DEPARTMENT OF COMMERCE</b>	
28.02.05 - <i>Rural Community Block Grant Program (RCBG)</i>	
Docket No. <b>28-0205-1201</b>	
Notice of Rulemaking - Temporary and Proposed Rule .....	682
28.02.06 - <i>Idaho Small Business Federal Funding Assistance Act Rules</i>	
Docket No. <b>28-0206-1201 (New Chapter)</b>	
Notice of Rulemaking - Adoption of Pending Rule .....	684
<b>IDAPA 35 - IDAHO STATE TAX COMMISSION</b>	
35.01.01 - <i>Income Tax Administrative Rules</i>	
Docket No. <b>35-0101-1201</b>	
Notice of Rulemaking - Proposed Rule.....	685
Docket No. <b>35-0101-1202</b>	
Notice of Rulemaking - Proposed Rule.....	697
35.01.02 - <i>Sales Tax Administrative Rules</i>	
Docket No. <b>35-0102-1201</b>	
Notice of Rulemaking - Proposed Rule.....	718
35.01.03 - <i>Property Tax Administrative Rules</i>	
Docket No. <b>35-0103-1202</b>	
Notice of Rulemaking - Proposed Rule.....	737
Docket No. <b>35-0103-1203</b>	
Notice of Rulemaking - Proposed Rule.....	741
Docket No. <b>35-0103-1204</b>	
Notice of Rulemaking - Proposed Rule.....	748
Docket No. <b>35-0103-1205</b>	
Notice of Rulemaking - Proposed Rule.....	755
Docket No. <b>35-0103-1207</b>	
Notice of Rulemaking - Proposed Rule.....	758
35.01.09 - <i>Table and Kitchen Wine Tax Administrative Rules</i>	
Docket No. <b>35-0109-1201</b>	
Notice of Rulemaking - Proposed Rule.....	782
35.01.10 - <i>Idaho Cigarette and Tobacco Products Tax Administrative Rules</i>	
Docket No. <b>35-0110-1201</b>	
Notice of Rulemaking - Proposed Rule.....	787
35.01.12 - <i>Idaho Beer Tax Administrative Rules</i>	
Docket No. <b>35-0112-1201</b>	
Notice of Rulemaking - Proposed Rule.....	791

35.02.01 - *Administration and Enforcement Rules*  
 Docket No. **35-0201-1201**  
 Notice of Rulemaking - Proposed Rule.....796

**IDAPA 36 - IDAHO BOARD OF TAX APPEALS**  
 36.01.01 - *Idaho Board of Tax Appeals Rules*  
 Docket No. **36-0101-1201**  
 Notice of Rulemaking - Proposed Rule.....802

**IDAPA 37 - DEPARTMENT OF WATER RESOURCES**  
 37.03.03 - *Rules and Minimum Standards for the Construction and Use of Injection Wells*  
 Docket No. **37-0303-1201**  
 Notice of Rulemaking - Proposed Rule.....826

**IDAPA 38 - DEPARTMENT OF ADMINISTRATION**  
 38.04.06 - *Rules Governing Use of the Exterior of State Property In the Capitol Mall and Other State Facilities*  
 Docket No. **38-0406-1201**  
 Notice of Rulemaking - Rescission of Temporary Rule .....891  
 Docket No. **38-0406-1202 (New Chapter)**  
 Notice of Rulemaking - Temporary and Proposed Rule .....892  
 38.04.07 - *Rules Governing Use of the Interior of State Property In the Capitol Mall and Other State Facilities*  
 Docket No. **38-0407-1201**  
 Notice of Rulemaking - Rescission of Temporary Rule .....902  
 Docket No. **38-0407-1202 (New Chapter)**  
 Notice of Rulemaking - Temporary and Proposed Rule .....903  
 38.04.08 - *Rules Governing Use of Idaho State Capitol Exterior*  
 Docket No. **38-0408-1201**  
 Notice of Rulemaking - Rescission of Temporary Rule .....910  
 Docket No. **38-0408-1202 (New Chapter)**  
 Notice of Rulemaking - Temporary and Proposed Rule .....911

**IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT**  
 39.02.61 - *Rules Governing License Plates for Governmental Agencies and Taxing Districts*  
 Docket No. **39-0261-1201**  
 Notice of Rulemaking - Proposed Rule.....923  
 39.02.71 - *Rules Governing Driver’s License Violation Point System*  
 Docket No. **39-0271-1201**  
 Notice of Rulemaking - Proposed Rule.....927  
 39.03.42 - *Rules Governing Highway Right-of-Way Encroachments on State Rights-of-Way*  
 Docket No. **39-0342-1201 (Fee Rule)**  
 Notice of Rulemaking - Temporary and Proposed Rule .....931

**IDAPA 47 - DIVISION OF VOCATIONAL REHABILITATION**  
 47.01.01 - *Rules of the Idaho Division of Vocational Rehabilitation*  
 Docket No. **47-0101-1202**  
 Notice of Rulemaking - Proposed Rule.....959

**IDAPA 52 - IDAHO STATE LOTTERY***52.01.02 - Gaming Rules of the Idaho State Lottery Commission*Docket No. **52-0102-1201**

Notice of Rulemaking - Proposed Rule.....966

*52.01.03 - Rules Governing Operations of the Idaho State Lottery*Docket No. **52-0103-1201 (Fee Rule)**

Notice of Rulemaking - Proposed Rule.....968

Docket No. **52-0103-1202**

Notice of Rulemaking - Proposed Rule.....975

**IDAPA 54 - OFFICE OF THE STATE TREASURER***54.03.01 - Idaho Unclaimed Property Administrative Rules*Docket No. **54-0301-1201**

Notice of Rulemaking - Proposed Rule.....987

**IDAPA 57- SEXUAL OFFENDER MANAGEMENT BOARD***57.01.01 - Rules Governing the Sexual Offender Management Board*Docket No. **57-0101-1201**

Notice of Intent to Promulgate Rules - Negotiated Rulemaking.....991

**SECTIONS AFFECTED INDEX** ..... 992**LEGAL NOTICE - SUMMARY OF PROPOSED RULEMAKINGS** ..... 1018**CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES** ..... 1029**SUBJECT INDEX** ..... 1043

# Preface

The Idaho Administrative Bulletin is an electronic-only, online monthly publication of the Office of the Administrative Rules Coordinator, Department of Administration, that is published pursuant to Section 67-5203, Idaho Code. The Bulletin is a compilation of all official rulemaking notices, official rule text, executive orders of the Governor, and all legislative documents affecting rules that are statutorily required to be published in the Bulletin. It may also include other rules-related documents an agency may want to make public through the Bulletin.

State agencies are required to provide public notice of all proposed rulemaking actions and must invite public input once formal rulemaking procedures have been initiated. The public receives notice that an agency has initiated formal rulemaking procedures through the Idaho Administrative Bulletin and a Public Notice of Intent (legal notice) that publishes in specific newspapers throughout the state. The legal notice provides reasonable opportunity for the public to participate when a proposed rule publishes in the Bulletin. Interested parties may submit written comments to the agency or request public hearings of the agency if none have been scheduled. Such submissions or requests must be presented to the agency within the time and manner specified in the individual “Notice of Rulemaking” for each proposed rule that is published in the Bulletin.

Once the comment period closes, the agency considers fully all comments and information submitted regarding the proposed rule. Changes may be made to the proposed rule at this stage of the rulemaking, but changes must be based on comments received and must be a “logical outgrowth” of the proposed rule. The agency may now adopt and publish the pending rule. A pending rule is “pending” legislative review for final approval. The pending rule is the agency’s final version of the rulemaking that will be forwarded to the legislature for review and final approval. Comment periods and public hearings are not provided for when the agency adopts a temporary or pending rule.

## CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

The Bulletin is identified by the calendar year and issue number. For example, Bulletin **11-1** refers to the first Bulletin issued in calendar year **2011**; Bulletin **12-1** refers to the first Bulletin issued in calendar year **2012**. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. **12-1** refers to January 2012; Volume No. **12-2** refers to February 2012; and so forth. Example: The Bulletin published in January 2011 is cited as Volume **11-1**. The December 2011 Bulletin is cited as Volume **11-12**.

## RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE

The **Idaho Administrative Code** is an electronic-only, online compilation of all final and enforceable administrative rules of the state of Idaho that are of full force and effect. Any temporary rule that is adopted by an agency and is of force and effect is codified into the Administrative Code upon becoming effective. All pending rules that have been approved by the legislature during the legislative session as final rules and any temporary rules that are extended supplement the Administrative Code. These rules are codified into the Administrative Code upon becoming effective. Because proposed and pending rules are not enforceable, they are published in the Administrative Bulletin only and cannot be codified into the Administrative Code.

To determine if a particular rule remains in effect or whether any amendments have been made to the rule, refer to the **Cumulative Rulemaking Index**. Link to it on the Administrative Rules homepage at [adminrules.idaho.gov](http://adminrules.idaho.gov).

## THE DIFFERENT RULES PUBLISHED IN THE ADMINISTRATIVE BULLETIN

Idaho’s administrative rulemaking process, governed by the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, comprises distinct rulemaking actions: negotiated, proposed, temporary, pending and final rulemaking. Not all rulemakings incorporate or require all of these actions. 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 - Negotiated Rulemaking” in the Administrative Bulletin by the agency is optional. This process normally results in the formulation of a proposed rule and the initiation of formal rulemaking procedures. One result, however, may also be that formal rulemaking is not initiated and no further action is taken by the agency. The rulemaking effectively stops before it gets started.

## **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 Rulemaking - Proposed Rule” 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) 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 when the pending rule will become effective; provided, however, that notwithstanding Section 67-5231, Idaho Code, the absence or accuracy of a fiscal impact statement provided pursuant to this subsection shall not affect the validity or enforceability of the rule.
- d) the text of the proposed rule prepared in legislative format;
- e) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;
- f) 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;
- g) the manner in which persons may request an opportunity for an oral presentation as provided in Section 67-5222, Idaho Code; and
- h) the deadline for public (written) comments on the proposed rule.

Any proposed rulemaking that is submitted for publication in the Bulletin that would impose a fee or charge must be accompanied by a cost/benefit analysis that is prepared by the agency. This cost/benefit analysis must estimate, as reasonably as possible, the costs to the agency to implement the rule and the estimated costs that would be borne by citizens or the private sector. This analysis is filed with the Director of Legislative Services Office who then forwards it to the appropriate germane joint subcommittee assigned to review the promulgating agency’s proposed rules.

When incorporating by reference, the notice of proposed rulemaking must include a brief synopsis detailing the need to incorporate by reference any additional materials into the rule. The agency must also provide information regarding access to the incorporated materials. At a minimum, and when available, the agency must provide an electronic link to the documents that can be accessed on a website or post this information on its own website, or both. This link can be placed into the rule and activated once it is posted on the Coordinator’s website.

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 adopt the pending rule. Because a proposed rule is not enforceable, it has no effective date, even when published in conjunction with a temporary rule that is of full force and effect. An agency may vacate (terminate) a rulemaking after the publication of a proposed rule if it decides, for whatever reason, not to proceed further to finalize the rulemaking. The publication of a “Notice of Vacation of Proposed Rulemaking” in the Bulletin officially 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 one or more of the above legal criteria and the governor determines that it is necessary that a rule become effective prior to receiving legislative authorization and without allowing for any public input, the agency may proceed and adopt a temporary rule. The law allows an agency to make a temporary rule immediately effective upon adoption. 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 extended by concurrent resolution, is replaced by a final rule, or expires under its own terms.

The statute that regulates rulemaking in Idaho requires that the text of all proposed rulemakings publish in the Bulletin in order for the rulemaking to be valid. This is true for all temporary rules as well. In most cases, the agency wants the temporary rule to also become a final rule and in most of these cases, the temporary rule and the proposed rule text is identical. In this event, both rulemakings may be promulgated concurrently yet they remain separate rulemaking actions. The rulemaking is published in the Bulletin as a temporary/proposed rule. Combining the rulemaking allows for a single publication of the text in the Bulletin.

An agency may, at any time, rescind a temporary rule that has been adopted and is in effect. The agency must publish a notice of rescission to effectively rescind the temporary rule. 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, will 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 Rulemaking - Pending Rule." 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 and a statement that the pending rule may be rejected, amended or modified by concurrent resolution of the legislature;
- d) an identification of any portion of the rule imposing or increasing a fee or charge and a statement that this portion of the rule shall not become final and effective unless affirmatively approved by concurrent resolution of the legislature;
- (e) the specific statutory authority for the rulemaking including a citation to the specific section of the Idaho Code that has occasioned the rulemaking, or the federal statute or regulation if that is the basis of authority or requirement for the rulemaking; and

- (f) 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 when the pending rule will become effective; provided however, that notwithstanding section 67-5231, Idaho Code, the absence or accuracy of a fiscal impact statement provided pursuant to this subsection shall not affect the validity or the enforceability of the rule.

Agencies are required to republish the text of the pending 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 sections or their subparts 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 Rulemaking - Adoption of Pending Rule" is published.

## **FINAL RULEMAKING**

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

No pending rule adopted by an agency becomes final and effective until it has been submitted to the legislature for review and approval. Where the legislature finds that an agency has violated the legislative intent of the authorizing statute, a concurrent resolution may be adopted to reject the rulemaking in whole or in part. A "Notice of Rulemaking - Final Rule" and the final codified text must be published in the Bulletin for any rule that is wholly or partially rejected by concurrent resolution of the legislature. Unless rejected by concurrent resolution, a pending rule that is reviewed by the legislature becomes final and effective at the end of the session in which it is reviewed without any further legislative action. All pending rules that are approved by concurrent resolution become final and effective upon adoption of the concurrent resolution unless otherwise stated. In no event can a pending rule 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**

**Internet Access** - The Administrative Code and Administrative Bulletin are available on the Internet at the following address: [adminrules.idaho.gov](http://adminrules.idaho.gov)

## **SUBSCRIPTIONS AND DISTRIBUTION**

For subscription information and costs, 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 Code** - annual subscription on CD-ROM. The Code is an annual compilation of all final administrative rules and all enforceable temporary rules and also includes all executive orders of the Governor that have published in the Bulletin, all legislative documents affecting rules, a table of contents, reference guides, and a subject index.

**The Idaho Administrative Bulletin** - annual subscription available on individual CD-ROM sent out monthly. The Bulletin is an official monthly publication of the State of Idaho and is available for purchase on CD-ROM only. Yearly subscriptions or individual CD-ROM's are available for purchase.

**Internet Access** - The Administrative Code and Administrative Bulletin, and many other rules-related documents are available on the Internet at the following address: [adminrules.idaho.gov](http://adminrules.idaho.gov)

## 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 schematic. 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 that are further subdivided into 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. Each rulemaking that is filed with the Coordinator is assigned a **“DOCKET NUMBER.”** The docket number is a series of numbers separated by a hyphen **“-”**, (**38-0501-1201**). Rulemaking dockets are published sequentially by IDAPA number (the two-digit agency code) in the Bulletin. The following example is a breakdown of a typical rule docket number:

### **“DOCKET NO. 38-0501-1201”**

**“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**).

**“1201”** denotes the year and sequential order of the docket being published; in this case the numbers refer to the first rulemaking action published in **calendar year 2012**. A subsequent rulemaking on this same rule chapter in calendar year 2012 would be designated as **“1202”**. The docket number in this scenario would be **38-0501-1202**.

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)**



**BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2012**

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
12-1	January 2012	<b>*November 25, 2011</b>	January 4, 2012	January 25, 2012
12-2	February 2012	January 13, 2012	February 1, 2012	February 22, 2012
12-3	March 2012	February 10, 2012	March 7, 2012	March 28, 2012
12-4	April 2012	March 9, 2012	April 4, 2012	April 25, 2012
12-5	May 2012	April 6, 2012	May 2, 2012	May 23, 2012
12-6	June 2012	May 4, 2012	June 6, 2012	June 27, 2012
12-7	July 2012	June 8, 2012	July 4, 2012	July 25, 2012
12-8	August 2012	July 6, 2012	August 1, 2012	August 22, 2012
12-9	September 2012	August 3, 2012	September 5, 2012	September 26, 2012
12-10	October 2012	<b>**August 31, 2012</b>	October 3, 2012	October 24, 2012
12-11	November 2012	October 5, 2012	November 7, 2012	November 28, 2012
12-12	December 2012	November 2, 2012	December 5, 2012	December 26, 2012

**BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2013**

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
13-1	January 2013	<b>*November 30, 2012</b>	January 2, 2013	January 23, 2013
13-2	February 2013	January 11, 2013	February 6, 2013	February 27, 2013
13-3	March 2013	February 8, 2013	March 6, 2013	March 27, 2013
13-4	April 2013	March 8, 2013	April 3, 2013	April 24, 2013
13-5	May 2013	April 5, 2013	May 1, 2013	May 22, 2013
13-6	June 2013	May 10, 2013	June 5, 2013	June 26, 2013
13-7	July 2013	June 7, 2013	July 3, 2013	July 24, 2013
13-8	August 2013	July 5, 2013	August 7, 2013	August 28, 2013
13-9	September 2013	August 2, 2013	September 4, 2013	September 25, 2013
13-10	October 2013	<b>**August 30, 2013</b>	October 2, 2013	October 23, 2013
13-11	November 2013	October 4, 2013	November 6, 2013	November 27, 2013
13-12	December 2013	November 8, 2013	December 4, 2013	December 25, 2013

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

***\*\*Last day to submit a proposed rule in order to have the rulemaking completed and submitted for review by legislature.***

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

<b>ALPHABETICAL INDEX OF STATE AGENCIES AND CORRESPONDING IDAPA NUMBERS</b>	
<b>IDAPA 15</b>	<b>Governor, Office of the</b> Idaho Commission on Aging (15.01) Idaho Commission for the Blind and Visually Impaired (15.02) Idaho Forest Products Commission (15.03) Division of Human Resources and Personnel Commission (15.04) Idaho Liquor Division (15.10) Idaho Emergency Communications Commission (15.06) Emergency Response Commission (15.13)
<b>IDAPA 48</b>	<b>Grape Growers and Wine Producers Commission, Idaho</b>
<b>IDAPA 16</b>	<b>Health and Welfare, Department of</b>
<b>IDAPA 41</b>	<b>Health Districts, Public</b>
<b>IDAPA 45</b>	<b>Human Rights Commission</b>
<b>IDAPA 17</b>	<b>Industrial Commission</b>
<b>IDAPA 18</b>	<b>Insurance, Department of</b>
<b>IDAPA 05</b>	<b>Juvenile Corrections, Department of</b>
<b>IDAPA 09</b>	<b>Labor, Idaho Department of</b>
<b>IDAPA 20</b>	<b>Lands, Department of</b>
<b>IDAPA 30</b>	<b>Libraries, Commission for</b>
<b>IDAPA 52</b>	<b>Lottery Commission, Idaho State</b>
<b>IDAPA 22</b>	<b>Medicine, Board of</b>
<b>IDAPA 23</b>	<b>Nursing, Board of</b>

**ALPHABETICAL INDEX OF STATE AGENCIES  
AND CORRESPONDING IDAPA NUMBERS**

<b>IDAPA 24</b>	<b>Occupational Licenses, Board of (24.20)</b> Acupuncture, Board of (24.17) Architectural Examiners, Board of (24.01) Barber Examiners, Board of (24.02) Chiropractic Physicians, Board of (24.03) Contractors Board, Idaho (24.21) Cosmetology, Board of (24.04) Counselors and Marriage and Family Therapists, Licensing Board of Professional (24.15) Dentistry, Board of (24.16) Drinking Water and Wastewater Professionals, Board of (24.05) Driving Businesses Licensure Board, Idaho (24.25) Landscape Architects, Board of (24.07) Liquefied Petroleum Gas Safety Board, Idaho State (24.22) Midwifery, Idaho Board of (24.26) Morticians, State Board of (24.08) Nursing Home Administrators, Board of Examiners of (24.09) Occupational Therapy Licensure Board (24.06) Optometry, State Board of (24.10) Physical Therapy Licensure Board (24.13) Podiatry, State Board of (24.11) Psychologist Examiners, Idaho State Board of (24.12) Real Estate Appraiser Board (24.18) Residential Care Facility Administrators, Board of Examiners of (24.19) Social Work Examiners, State Board of (24.14) Speech and Hearing Services Licensure Board (24.23)
<b>IDAPA 25</b>	<b>Outfitters and Guides Licensing Board</b>
<b>IDAPA 50</b>	<b>Pardons and Parole, Commission for</b>
<b>IDAPA 26</b>	<b>Parks and Recreation, Department of</b>
<b>IDAPA 27</b>	<b>Pharmacy, Board of</b>
<b>IDAPA 11</b>	<b>Police, Idaho State</b>
<b>IDAPA 29</b>	<b>Potato Commission, Idaho</b>
<b>IDAPA 55</b>	<b>Professional-Technical Education, Division of</b>
<b>IDAPA 59</b>	<b>Public Employee Retirement System of Idaho (PERSI)</b>
<b>IDAPA 31</b>	<b>Public Utilities Commission</b>
<b>IDAPA 56</b>	<b>Rangeland Resources Commission, Idaho</b>
<b>IDAPA 33</b>	<b>Real Estate Commission, Idaho</b>
<b>IDAPA 34</b>	<b>Secretary of State, Office of the</b>
<b>IDAPA 57</b>	<b>Sexual Offender Management Board</b>
<b>IDAPA 49</b>	<b>Shorthand Reporters Board, Idaho Certified</b>
<b>IDAPA 60</b>	<b>Soil and Water Conservation Commission, Idaho State</b>

<b>ALPHABETICAL INDEX OF STATE AGENCIES AND CORRESPONDING IDAPA NUMBERS</b>	
<b>IDAPA 36</b>	<b>Tax Appeals, Board of</b>
<b>IDAPA 35</b>	<b>Tax Commission, State</b>
<b>IDAPA 39</b>	<b>Transportation Department, Idaho</b>
<b>IDAPA 54</b>	<b>Treasurer, Office of the State</b>
<b>IDAPA 21</b>	<b>Veterans Services, Division of</b>
<b>IDAPA 46</b>	<b>Veterinary Medical Examiners, Board of</b>
<b>IDAPA 47</b>	<b>Vocational Rehabilitation, Division of</b>
<b>IDAPA 37</b>	<b>Water Resources, Department of</b>
<b>IDAPA 42</b>	<b>Wheat Commission</b>

## **IDAPA 01 - BOARD OF ACCOUNTANCY**

### **01.01.01 - IDAHO ACCOUNTANCY RULES**

#### **DOCKET NO. 01-0101-1201**

### **NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-204(1) Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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 004.02 to update the incorporation by reference from 2002 to 2012 for the "Statements on Standards for Continuing Professional Education." The new "Statements on Standards for Continuing Professional Education" was jointly approved by the American Institute of Certified Public Accountants (AICPA) and the National Association of State Boards of Accountancy (NASBA) in 2012.

**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 changes are simple in nature and were discussed with the Idaho Society of Certified Public Accountants and licensing candidates without objections.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

Rule 004.02 is incorporated by reference under Rule 004. These materials are being incorporated by reference so that licensees, Continuing Professional Education program developers and program sponsors are aware of the standards that they will be held to in the area of Continuing Professional Education. With these standards jointly approved by the AICPA and NASBA, our licensees and the general public can benefit from knowing that strict guidelines have been established around what constitutes a quality learning experience.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact the undersigned.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 28th, Day of August, 2012.

Kent A. Absec, Executive Director  
Idaho State Board of Accountancy  
3101 W. Main Street, Suite 201  
PO Box 83720, Boise, ID 83720-0002  
Phone: 208-334-2490 / Fax: 208-334-2615  
E-Mail: [kent.absec@isba.idaho.gov](mailto:kent.absec@isba.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 01-0101-1201**

**004. INCORPORATION BY REFERENCE (RULE 004).**

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

**01. AICPA Standards.** The AICPA Professional Standards as applicable under the circumstances and at the time of the services, except as superceded by Section 54-206(8), Idaho Code. (3-29-10)

**02. CPE Standards.** ~~2002~~ 2012 Statements on Standards for Continuing Professional Education Programs jointly approved by NASBA and AICPA. (~~4-2-03~~ )

**03. PCAOB Standards.** The Standards issued by the Public Company Accountability Oversight Board, as applicable under the circumstances and at the time of the services. (3-29-10)

**04. NASBA Model Code of Conduct.** 2008 Model Code of Conduct issued by the National Association of State Boards of Accountancy. (5-8-09)

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.02.14 - RULES FOR WEIGHTS AND MEASURES

DOCKET NO. 02-0214-1201

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

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 71-111, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

To adopt by reference the 2013 edition of the National Institute of Standards and Technology Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices. NIST documents are available online at <http://www.nist.gov/pml/wmd/index.cfm>.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the July 4, 2012 Idaho Administrative Bulletin, Vol. 12-7, pages 17 and 18.

**IDAHO CODE SECTION 22-101A STATEMENT:** This rule does regulate an activity not already regulated by the federal government, because the federal government does not regulate specifications, tolerances and other technical requirements for weighing and measuring devices. The rule is, however consistent with national standards by the National Institute of Standards and Technology.

**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: ISDA does not anticipate any fiscal impact from the changes to be made to the Rule during this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Kevin Merritt, Section Manager at (208) 332-8692.

DATED this 31st day of August, 2012.

Brian Oakey  
Deputy Director  
Idaho State Dept. of Agriculture

2270 Old Penitentiary Road  
P.O. Box 790, Boise, ID 83701  
Phone: (208) 334-8500/Fax: (208) 334-2170

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#### DOCKET NO. 02-0214-1201 - ADOPTION OF PENDING RULE

**No substantive changes have been made to the pending rule.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 12-7, July 4, 2012, pages 17 and 18.**

**This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2013 Idaho State Legislature for final adoption.**



## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.03.03 - RULES GOVERNING PESTICIDE AND CHEMIGATION USE AND APPLICATION

DOCKET NO. 02-0303-1201

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-3421, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

Due to recent changes to soil fumigation labels by the USEPA, all private applicators who want to purchase or apply soil fumigation products will have to attend training every three (3) years, specific to the soil fumigation product they wish to purchase. The USEPA will allow any private applicator with a soil fumigation category on their pesticide license to purchase soil fumigation products without the required training. IDAPA 02.03.03.050.01.c., "Rules Governing Pesticide and Chemigation Use and Application," will be amended to add a new soil fumigation license category for private applicator licenses.

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

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

ISDA does not anticipate any fiscal impact from the changes to be made to the rule during this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 4, 2012 Idaho Administrative Bulletin, Vol. 12-7, Page 19. A negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on July 10.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Ben Miller, Bureau Chief, 208-332-8593.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to Ben Miller and must be delivered on or before October 24, 2012. Comments can be delivered via email to [Ben.Miller@agri.idaho.gov](mailto:Ben.Miller@agri.idaho.gov) or via regular mail to Ben Miller's attention at the address listed below.

DATED this 31st day of August, 2012.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0303-1201

050. PRIVATE APPLICATOR LICENSING.

01. Applying for a Private Applicator's License. Applicants who wish to obtain a private applicator's license shall: ~~(3-20-97)~~( )

a. Fill out an application prescribed by the Department: ~~and~~ ~~(3-20-97)~~( )

b. Take an examination based on the Environmental Protection Agency (EPA) core manual and score a minimum of seventy percent (70%). The examination procedure shall be the same as for professional applicators (Subsection 100.03), except private applicators shall not be assessed an examination fee. (3-20-97)

02. License Categories. ( )

ea. Private applicators shall be certified and licensed in one or ~~both~~ more of the following categories: ~~(3-20-97)~~( )

i. Restricted Use Pesticide (RU). For persons who use or supervise the use of restricted use pesticides to produce agricultural commodities or forest crops on land they or their employer(s) own(s) or operate(s). (3-20-97)

ii. Chemigation (CH). For persons who apply chemicals through irrigation systems on land they or their employer(s) own(s) or operate(s). (3-20-97)

iii. Soil Fumigation (SF). For persons who apply soil fumigants on land they or their employer(s) own(s) or operate(s). In order to be certified and licensed in this category, private applicators must pass both the RU examination and the SF examination. ( )

~~4b.~~ Non-reading applicators may be certified to purchase and apply a single restricted use pesticide when they have demonstrated their competence in the safe and proper use of such pesticide to the Director or other designated agent. (3-20-97)

023. License Recertification. In order for a private applicator's license to be renewed, the license holder must complete the recertification provisions of this section. Beginning July 1, 1996, licenses belonging to private applicators with last names beginning with A through L, inclusive, shall expire on the last day of the month listed on the chart in Subsection 050.023.a. in every odd-numbered year, and licenses belonging to private applicators with last names beginning with M through Z, inclusive, shall expire on the last day of the month listed on the chart in Subsection 050.023.a., in every even-numbered year. The recertification period shall be concurrent with the licensing period. Those persons who are currently licensed as a private applicator or chemigator on June 30, 1996, shall be reissued a private applicator license with the appropriate categories. Those persons who are currently licensed as a private applicator or chemigator on June 30, 1996, shall be grandfathered into the licensing schedule at Subsection 050.023.a. Any person with less than thirteen (13) months in the initial licensing period shall not be required to obtain recertification credits for the initial period. Upon issuance of the replacement license, the previous license shall be null and void. Any private applicator license without an expiration date shall be null and void on December 31, 1996. Recertification and relicensing may be accomplished by complying with either Subsection 050.023.b. or 050.023.c. ~~(3-23-98)~~( )

a. Licensing schedule.

Last Name		Month to License
Odd Year	Even Year	
A-D	M-P	March

Last Name		Month to License
Odd Year	Even Year	
E-H	Q-T	July
I-L	U-Z	October

(3-20-97)

**b.** A person shall accumulate recertification credits by attending Department-accredited pesticide instruction seminars. (3-20-97)

i. A minimum of six (6) credits shall be earned during each recertification period. (3-23-98)

ii. Guidelines for obtaining recertification credits shall be the same as for professional applicators, as described in Subsections 100.04.a.ii. through 100.04.a.v. Any credits accumulated beyond the required six (6) in a recertification period may not be carried over to the next recertification period. (3-23-98)

iii. Upon earning the recertification credits as described above, a person shall be considered by the Department to be recertified and eligible for license renewal for the next licensing period. (3-20-97)

**c.** A person shall pass the Department's private applicator recertification examination(s) for all categories in which the person intends to license with a minimum score of seventy percent (70%). (3-20-97)

i. Recertification examinations may be taken by a person beginning the thirteenth (13th) month of the license period. (3-20-97)

ii. The examination procedures as outlined in Subsection 100.03 shall be followed, except that an examination fee shall not be assessed. (3-20-97)

iii. Upon passing the recertification examinations, a person shall be considered by the Department to be recertified and eligible for license renewal for the next licensing period. (3-20-97)

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.04.19 - RULES GOVERNING DOMESTIC CERVIDAE

DOCKET NO. 02-0419-1201

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 25-221 Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

Amend Subsection 011.04. The acronym AZA, defined as the American Zoological Association, is incorrect. The correct definition for AZA is the Association of Zoos and Aquarium.

Amend Subsection 450.01 to allow the Administrator to grant exemptions to the change of ownership tuberculosis (TB) testing requirement for domestic cervidae on a case-by-case basis, based upon individual circumstances. This would allow cervidae farms that maintain their herd to conform to all TB testing requirements to be sold to another producer without losing their test status. The new owner of the herd may then be granted an exemption as the herd test status will not have changed, only the ownership of the animals.

**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:

ISDA does not anticipate any fiscal impact from the changes to be made to the Rule as a result of this rulemaking.

**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 August 1, 2012 Idaho Administrative Bulletin, Vol. 12-8, page 14. A negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on August 15, 2012 and there were no visitors in attendance.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** Technical questions concerning the proposed rule may be directed to Dr. Scott Leibsle, Deputy Administrator, 208-332-8540.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012. Comments can be delivered via email to [Scott.Leibsle@agri.idaho.gov](mailto:Scott.Leibsle@agri.idaho.gov) or via regular mail to Dr. Scott Leibsle's attention at the address listed below.

DATED this 31st day of August, 2012.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0419-1201

011. ABBREVIATIONS.

01. AAVLD. American Association of Veterinary Laboratory Diagnosticians. (4-2-03)
02. APHIS. Animal and Plant Health Inspection Service. (4-2-03)
03. AVIC. Area Veterinarian in Charge. (4-2-03)
04. AZA. ~~American Zoological~~ Association of Zoos and Aquariums. ~~(4-2-03)~~( )
05. CFR. Code of Federal Regulations. (4-2-03)
06. CWD. Chronic Wasting Disease. (4-2-03)
07. CWDP. Chronic Wasting Disease Program. (4-2-03)
08. ISDA. Idaho State Department of Agriculture. (4-2-03)
09. NAEBA. North American Elk Breeders Association. (4-2-03)
10. NVSL. National Veterinary Services Laboratory. (4-2-03)
11. TB. Tuberculosis. (4-2-03)
12. UM&R. Uniform Methods and Rules. (4-2-03)
13. USDA. United States Department of Agriculture. (4-2-03)
14. VS. Veterinary Services. (4-2-03)

(BREAK IN CONTINUITY OF SECTIONS)

450. TUBERCULOSIS.

01. **Change of Ownership.** All domestic cervidae that are sold, or are in any way transferred from one person to another person in Idaho are required to be tested negative for TB within ninety (90) days prior to the change of ownership or transfer, except: (4-2-03)

a. Animals originating from an accredited, qualified or monitored herd, as described in "Bovine Tuberculosis Eradication, Uniform Methods and Rules," effective January 22, 1999, if they are accompanied by a certificate signed by an accredited veterinarian or the Administrator stating such domestic cervidae have originated directly from such herd; or (4-2-03)

b. Those domestic cervidae consigned directly to an approved slaughter establishment or domestic cervidae approved feedlot. (4-2-03)

c. The Administrator, following an evaluation, may grant exceptions to the provisions of this Section on a case-by-case basis. ( )

02. **Rules and UM&R.** Owners of domestic cervidae ranches shall comply with IDAPA 02.04.03, "Rules of the Department of Agriculture Governing Animal Industry," that apply to domestic cervidae, and the Bovine Tuberculosis Eradication, UM&R, Effective January 22, 1999. (4-2-03)

**IDAPA 02 - DEPARTMENT OF AGRICULTURE**  
**02.04.21 - RULES GOVERNING THE IMPORTATION OF ANIMALS**  
**DOCKET NO. 02-0421-1201**  
**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 25-221 Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

Amend Section 011.03 - the acronym AZA, defined as the American Zoological Association, is incorrect. The correct definition for AZA is the Association of Zoos and Aquariums.

Amend Section 601.01 - more clearly define the current brucellosis testing requirement as a single blood sample from which two (2) different diagnostic tests for brucellosis shall be performed. This will clarify that the producers need only work their elk once to collect blood.

Amend Section 601.02 - expand the list of testing exemptions for Red Deer Genetic Factor (RDGF) to include any state or province that has implemented an approved RDGF prevention program for domestic cervidae. The existing rule identifies Montana as the only state that would qualify for a testing exemption because at the time the original rule was written, Montana was the only state to have implemented an approved RDGF program.

Amend Section 606 - expand the tuberculosis (TB) testing exemptions to include any cervidae moving between the Association of Zoos and Aquarium accredited facilities and those facilities that have a USDA exhibitor permit. The existing rule requirements are redundant to require TB testing for movement between these facilities which are both federally regulated for TB prevention. The change would prevent a producer from having to re-test an animal that is moving between these types of facilities.

Clarify and condense portions of the rule for purposes of simplification and maintaining consistency.

**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:

ISDA does not anticipate any fiscal impact from the changes to be made to the Rule as a result of this rulemaking.

**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 August 1, 2012 Idaho Administrative Bulletin, [Vol. 12-8, pages 15 and 16](#). A negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on August 15, 2012 and there were no visitors in attendance.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** Technical questions concerning the proposed rule may be directed to Dr. Scott Leibsle, Deputy Administrator, 208-332-8540.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012. Comments can be delivered via email to [Scott.Leibsle@agri.idaho.gov](mailto:Scott.Leibsle@agri.idaho.gov) or via regular mail to Dr. Scott Leibsle's attention at the address listed below.

DATED this 31st day of August, 2012.

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

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0421-1201**

**011. ABBREVIATIONS.**

- |                  |   |                         |
|------------------|---|-------------------------|
| 01.              | APHIS. Animal and Plant Health Inspection Service.                            | (4-2-08)                |
| 02.              | AVIC. Area Veterinarian in Charge.  | (5-3-03)                |
| 03.              | AZA. <del>American Zoological</del> Association <u>of Zoos and Aquariums.</u> | <del>(5-3-03)</del> ( ) |
| 04.              | CF. Complement Fixation Test.   | (3-30-07)               |
| 05.              | CFR. Code of Federal Regulations.   | (5-3-03)                |
| 06.              | CWD. Chronic Wasting Disease.   | (5-3-03)                |
| 07.              | EIA. Equine Infectious Anemia.  | (5-3-03)                |
| 08.              | EVA. Equine Viral Arteritis.  | (5-8-09)                |
| 09.              | NAEBA. North American Elk Breeders Association.                               | (5-3-03)                |
| 10.              | NPIP. National Poultry Improvement Plan.                                      | (5-3-03)                |
| 11.              | PCR. Polymerase Chain Reaction.   | (4-2-08)                |
| <u>12.</u>       | <u>RDGE. Red Deer Genetic Factor.</u>   | ( )                     |
| <del>12</del> 3. | TB. Tuberculosis.   | (5-3-03)                |
| <del>13</del> 4. | UM&R. Uniform Methods and Rules.  | (5-3-03)                |
| <del>14</del> 5. | USDA. United States Department of Agriculture.                                | (5-3-03)                |
| <del>15</del> 6. | VHSV. Viral Hemorrhagic Septicemia Virus.                                     | (4-2-08)                |
| <del>16</del> 7. | VS. Veterinary Services.  | (5-3-03)                |

**(BREAK IN CONTINUITY OF SECTIONS)**

**102. EXTENDED VALIDITY EQUINE CERTIFICATES.**

Equidae from other states may enter the state of Idaho for shows, rides or other equine events and return to the state of origin on an extended validity equine certificate provided there is a written agreement between the Administrator and the chief livestock sanitary official of the state of origin. (5-3-03)

**01. Valid for One Animal.** An extended validity equine certificate shall be valid for only one (1) animal. Each animal shall have a separate certificate. (5-3-03)

**02. Contents.** Extended validity equine certificates shall contain the following information: name and address of the owner, location at which the animal is stabled, housed, pastured or kept, if different from that of the owner, an accurate description and identification of the animal, date of veterinary inspection, dates and results of EIA or other required tests or vaccinations, EVA statement, if applicable, and signature of inspecting veterinarian. ~~(5-3-03)~~( )

**03. Period of Validity.** Extended validity equine certificates shall be valid for no longer than six (6) months from date of veterinary inspection for the certificate. (3-30-07)

**04. Travel Itinerary.** Recipients of extended validity equine certificates shall submit a completed travel itinerary to the Division of Animal Industries within ten (10) working days of the end of the six (6) month period of validity of the certificate. The travel itinerary shall provide a listing of all travel into the state of Idaho, including travel dates, purpose for travel and destinations, during the period of validity of the certificate. (5-3-03)

**05. Cancellation.** Extended validity equine certificates may be canceled at any time by the Administrator in the event of serious or emergency disease situations or for non-compliance with the provisions of these rules. (5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

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

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

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

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

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

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

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

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

**05. Domestic Bison.** All domestic bison imported into Idaho shall require an entry permit from the Division of Animal Industries prior to importation and be in compliance with the same requirements as cattle



contained in this chapter and Title 9, Parts 71, 77, and 78, CFR.( )

~~056.~~ **Canadian Cattle and Canadian Domestic Bison.** All cattle and Canadian domestic bison imported into Idaho from Canada, except those imported directly to slaughter, must have an import permit prior to importation. (5-8-09)( )

~~067.~~ **Other.** Cattle of any classification that do not meet other entry requirements. (5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

~~261. -- 289.~~ **(RESERVED)**

~~290.~~ **DOMESTIC BISON.**

~~01.~~ **Shipment.** *All domestic bison imported into Idaho shall be in compliance with the same requirements as cattle contained in this chapter and Title 9, Parts 71, 77, and 78, CFR.* (5-3-03)

~~02.~~ **Permits.** *A permit is required from the Division of Animal Industries prior to importation of domestic bison.* (5-3-03)

~~291. — 299.~~ **(RESERVED)**

**300. HORSES, MULES, ASSES AND EQUIDAE.**

All horses, mules, asses and other equidae that are to be transported or moved into the state of Idaho shall be accompanied by an official certificate of veterinary inspection or extended validity equine certificate, from the state of origin, stating that the equidae are free from evidence of any communicable disease and have completed EIA test requirements, except as provided in this section. (5-3-03)( )

**01. EIA Test Requirements.** An official EIA test is a blood test conducted by a USDA approved laboratory, within twelve (12) months prior of entry of the equidae into Idaho. (3-30-07)

**a.** Entry of equidae into Idaho shall not be allowed until the EIA test has been completed and reported negative. Equidae which test positive to the EIA test shall not be permitted entry into Idaho, except by special written permission from the Administrator. (5-3-03)

**b.** A nursing foal less than six (6) months of age accompanied by its EIA negative dam is exempt from the test requirements. (5-3-03)

**02. Working Horses Included on Grazing Permits.** “Working horses” used for seasonal ranching purposes may be exempt from the requirements of this section if the horses have been included on a current grazing permit which has received prior approval from the Administrator and the chief livestock sanitary official in a western state which reciprocates with Idaho in honoring grazing permits. (5-3-03)

**03. Slaughter Horses.** Equids being moved to an approved equine slaughter establishment may be exempted from EIA test requirements. (5-3-03)

**04. Equine Feeding Facilities.** Equids being fed for slaughter in an equine feeding facility approved by the Administrator may be exempt from EIA test requirements. (5-3-03)

**05. Reciprocal Agreements.** The Administrator may enter into cooperative reciprocal agreements with neighboring states which exempt EIA testing requirements for movement of equidae between the cooperating states. (5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**601. TESTING REQUIREMENTS.**

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

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

**02. Red Deer Genetic Factor.** Elk shall have either tested negative for red deer genetic factor (RDGF) by a laboratory approved by the Division of Animal Industries, or shall have been registered with NAEBA or the Canadian Food Inspection Agency, or ~~the Montana Department of Livestock~~ a state with an ISDA approved RDGF prevention program. (~~5-8-09~~)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**606. MOVEMENT OF CERVIDAE BETWEEN AZA AND USDA FACILITIES.**

Movement of cervidae between ~~accredited facilities that are either~~ AZA ~~facilities is~~ accredited or hold a USDA exhibitor permit are exempt from the tuberculosis testing requirements of this rule. All other movement to or from facilities that are not AZA-accredited ~~facilities~~ or hold a USDA exhibitor permit shall comply with the tuberculosis testing requirements. (~~5-3-03~~)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**650. FISH.**

No person shall import, transport, receive or otherwise bring into the State of Idaho any live fish or viable hatching eggs that are listed as Deleterious Exotic Animals in IDAPA 02.04.27 "Rules Governing Deleterious Exotic Animals," or Invasive Species as listed in IDAPA 02.06.09, "Rules Governing Invasive Species." (~~4-2-08~~)( )

**IDAPA 02 - DEPARTMENT OF AGRICULTURE**  
**02.06.12 - RULES PERTAINING TO THE IDAHO FERTILIZER LAW**  
**DOCKET NO. 02-0612-1201**  
**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 22-604, Idaho Code.

**DESCRIPTIVE SUMMARY:** The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the July 4, 2012 Idaho Administrative Bulletin, [Vol. 12-7, pages 21 and 22](#).

**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:

ISDA does not anticipate any fiscal impact from the changes to be made to the Rule as a result of this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Kathryn Mink, Agriculture Section Manager at (208) 332-8564.

DATED this 31st day of August, 2012.

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

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**DOCKET NO. 02-0612-1201 - ADOPTION OF PENDING RULE**

**No substantive changes have been made to the pending rule.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin,  
[Volume 12-7, July 4, 2012, pages 21 and 22](#).**

**This rule has been adopted as a pending rule by the Agency and is now awaiting  
review and approval by the 2013 Idaho State Legislature for final adoption.**

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

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

DOCKET NO. 02-0613-1201

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-108, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

1. Amending Section 004 to update definitions; and
2. Amending section 150.01b to revise an outdated testing method.

**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: ISDA does not anticipate any fiscal impact from the changes to be made to the Rule as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 4, 2012 and August 1, 2012 Idaho Administrative Bulletins, [Vol. 12-7, Page 23](#) and [Vol. 12-8, Page 17](#). A negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on August 9, 2012 and there were no visitors in attendance at the meeting.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to Michael E. Cooper and must be delivered on or before October 24, 2012. Comments can be delivered via email to [Mike.Cooper@agri.idaho.gov](mailto:Mike.Cooper@agri.idaho.gov) or via regular mail to Michael E. Cooper's attention at the address listed below.

DATED this 31st day of August, 2012.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0613-1201

004. DEFINITIONS.

01. **Department.** The Department of Agriculture of the state of Idaho. (7-1-93)
02. **Director.** The Director of the Department or his duly authorized agent. (7-1-93)
03. **Person.** A natural person, individual, firm, partnership, corporation, company, society, association, cooperative, two (2) or more persons having a joint or common interest, or any unit or agency of local, state, or federal government. (7-1-93)
04. **Producer.** Any person who is the owner, tenant, or operator of land who has an interest in and is entitled to receive all or any part of the proceeds from the sale of any commodity produced on that land. (7-1-93)
05. **Rapeseed.** Those species of *Brassica napus*, *Brassica rapa* (formerly *Brassica campestris*), and *Brassica juncea*. (7-1-93)( )
06. **Types.** Those species and varieties of rapeseed classified as follows: (7-1-93)
- a. Edible: (7-1-93)
- i. Low Erucic Acid Rapeseed -- Low Glucosinolates (LEAR-LG), commonly called "canola," shall be the seed of the species *Brassica napus*, *Brassica juncea*, or *Brassica campestris rapa*, the oil components of which seed contain less than two percent (2.0%) erucic acid and the seed meal will contain less than thirty (30) micromoles of any one (1) or any mixture of 3-butenyl glucosinolate, 4-pentenyl glucosinolate, 2-hydroxy - 3-butenyl glucosinolate, and 2-hydroxy - 4 pentenyl glucosinolate per gram ( $\mu\text{m/g}$ ) of air dry, oil free solid as determined by any approved method. (7-1-93)( )
- ii. Low Erucic Acid Rapeseed -- High Glucosinolates (LEAR-HG) Rapeseed varieties shall contain less than two percent (2.0%) erucic acid in the oil of the rapeseed and more than thirty (30) micromoles per one (1) gram ( $\mu\text{m/g}$ ) glucosinolates in the rapeseed meal. (7-1-93)( )
- b. Industrial: (7-1-93)
- i. High Erucic Acid Rapeseed -- Low Glucosinolates (HEAR-LG) Rapeseed shall be rapeseed varieties used for production of industrial oil which shall contain erucic acid levels above forty percent (40%) in the oil of the rapeseed and less than thirty (30) micromoles per one (1) gram ( $\mu\text{m/g}$ ) glucosinolates in the meal of the rapeseed. (7-1-93)( )
- ii. High Erucic Acid Rapeseed -- High Glucosinolates (HEAR-HG) Rapeseed shall be rapeseed varieties used for production of industrial oil which shall contain erucic acid levels above forty percent (40%) in the oil of the rapeseed and more than thirty (30) micromoles per one (1) gram ( $\mu\text{m/g}$ ) glucosinolates in the meal of the rapeseed. (7-1-93)( )
07. **Volunteer Rapeseed.** A plant that arises from accidental or unintentional scattering of seed. (7-1-93)
08. **Condiment Mustard.** Varieties of *Brassica juncea* produced for seed to be used for spice or condiment. ( )
09. **Green Manure Rapeseed.** Varieties of rapeseed used as a cover crop to be plowed down prior to flowering and maturity. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**150. REQUIREMENTS FOR ALL BRASSICA SEEDS TO BE PLANTED IN IDAHO.**

- 01. Requirements.** All *Brassica* seeds to be planted in Idaho shall meet the following requirements. (9-1-94)
- a.** *Brassica* seeds shall be treated with an EPA and State registered fungicide for the control of blackleg (*Leptosphaeria maculans*). (9-1-94)
- b.** *Brassica* seed lots produced outside Idaho shall be accompanied by a phytosanitary certificate stating that the seed is free (zero tolerance) from blackleg based on a laboratory test of a minimum of ~~one and three-tenths~~ two point nine (1.329) ~~ounces~~ grams or ~~ten one~~ thousand (~~10,000~~) seeds. (9-1-94)( )
- 02. Exemptions.** The following are not subject to the provisions of Subsections 150.01.a. and 150.01.b. (9-1-94)
- a.** *Brassica* seeds sold in lots of two (2) pounds or less. (9-1-94)
- b.** *Brassica* seeds produced in Idaho. (9-1-94)

**IDAPA 02 - DEPARTMENT OF AGRICULTURE**  
**02.06.14 - RULES GOVERNING ANNUAL BLUEGRASS (POA ANNUA)**

**DOCKET NO. 02-0614-1201**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-2006, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

Amending Section 200 - Rules Governing the Planting of Regulated Articles - to allow for the use of a certificate of analysis in lieu of tags.

Amending Section 300 - Application for Nursery Inspections - to allow for inspection by the Idaho Crop Improvement Association.

**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:

ISDA does not anticipate any fiscal impact as a result of this rule change.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 4, 2012 Idaho Administrative Bulletin, [Vol. 12-7, Page 24](#). A negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on July 17, 2012 and there were no visitors in attendance at the meeting nor did the department receive comments.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to Michael E. Cooper and must be delivered on or before October 24, 2012. Comments can be delivered via email to [Mike.Cooper@agri.idaho.gov](mailto:Mike.Cooper@agri.idaho.gov) or via regular mail to Michael E. Cooper's attention at the address listed below.

DATED this 31st day of August, 2012.

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

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0614-1201**

**200. RULES GOVERNING PLANTING OF REGULATED ARTICLES.**

**01. Requirements.** Prior to any person planting any grass species seed stock in Idaho, that person shall comply with the following requirements: (3-30-01)

**a.** Submit ~~for~~ an official laboratory analysis ~~of~~ a representative sample showing freedom from annual bluegrass based on a five (5) gram sample for bentgrass or redtop, a twenty-five (25) gram sample for bluegrass, or a fifty (50) gram sample for other grasses; or ~~(3-30-01)~~( )

**b.** Have a representative sample submitted for testing. (3-30-01)

**02. Tags.** Upon receipt by the Director of an official seed laboratory analysis showing freedom from annual bluegrass, sequentially numbered tags will be issued for each bag found free of annual bluegrass from those lots according to Subsection 010.06. (5-3-03)

**03. Analysis Certificate.** In lieu of tags, a seed analysis certificate from an official seed laboratory showing each lot being planted to be free from annual bluegrass must be kept on file for a minimum of one (1) year after all of the inventory of that lot's harvested seed has been sold. ( )

**201. -- 249. (RESERVED)**

**250. INFESTED SEED STOCK.**

Each lot of seed found to contain annual bluegrass shall be placed under a "Hold Order" pursuant to Section 22-103(22), Idaho Code, to be released only for shipment out of Idaho or for planting in nurseries of two (2) acres or less under supervision of the Director. The nursery shall be seeded in rows spaced twenty-four (24) inches apart and it shall be the duty of the person receiving such seed to rogue this increase area or chemically treat to eradicate the annual bluegrass. Seed increases shall be inspected by the department or the Idaho Crop Improvement Association at least three (3) times during the seedling year. Any areas not passing inspection shall not be harvested but shall be destroyed upon the order of the Director at the owner's expense. ~~(4-6-90)~~( )

**251. -- 299. (RESERVED)**

**300. APPLICATION FOR NURSERY INSPECTION.**

A person shall make application for nursery inspection to the Idaho Department of Agriculture or the Idaho Crop Improvement Association at least fourteen (14) days prior to planting. ~~(4-6-90)~~( )



## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.06.16 - RULES GOVERNING HONEY STANDARDS

#### DOCKET NO. 02-0616-1201 (NEW CHAPTER)

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-2807, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

A new rule chapter would be developed that would mirror existing standards adopted by other states relative to the identity, quality and labeling of honey, complaint procedures and enforcement criterion.

**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:

ISDA does not anticipate any fiscal impact to the state general fund from the promulgation of this rule. Any funding will come from the Idaho Honey Advertising Commission account.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 4, 2012 and August 1, 2012 Idaho Administrative Bulletins, [Vol. 12-7, Page 25](#) and [Vol. 12-8, Page 18](#). A negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on August 9, 2012 and there were eight visitors in attendance at the meeting.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The United States Standards for Grades of Extracted Honey adopted by the Agriculture Marketing Service, United States Department of Agriculture effective May 23, 1985, are hereby adopted as the standards for the purposes of this rule. These standards also serve as a basis for the inspection and grading of Honey by the Federal inspection service. This manual contains detailed interpretations of the grade standards and provide step-by-step procedures for grading the product. In all instances, a grade can be assigned based on final product factors or characteristics. In addition to the U.S. grade standards, grading manuals or instructions for inspection of several processed fruits and vegetables are available.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to Michael E. Cooper and must be delivered on or before October 24, 2012. Comments can be delivered via email to [Mike.Cooper@agri.idaho.gov](mailto:Mike.Cooper@agri.idaho.gov) or via regular mail to Michael E. Cooper's attention at the address listed below.

DATED this 31st day of August, 2012

Brian J. Oakey  
Deputy Director  
Idaho State Department of Agriculture

2270 Old Penitentiary Rd.  
P.O. Box 790, Boise, Idaho 83701  
Phone: (208) 332-8500 Fax: (208) 334-2170

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0616-1201**

**IDAPA 02  
TITLE 06  
CHAPTER 16**

**02.06.16 - RULES GOVERNING HONEY STANDARDS**

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Section 22-2808, Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is IDAPA 02.06.16, "Rules Governing Honey Standards. ( )

**02. Scope.** These rules apply to all honey produced by honey bees from nectar and covers all styles of honey presentation that are processed and ultimately intended for direct consumption, and to all honey packed, processed or intended for sale in bulk containers as honey that may be repacked for retail sale or for sale or use as an ingredient in other foods. The official citation of this chapter is IDAPA 02.06.14.000 et seq. For example, the citation for this section is IDAPA 02.06.14.001. ( )

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations of these rules. ( )

**003. ADMINISTRATIVE APPEAL.**

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

**004. INCORPORATION BY REFERENCE.**

**01. United States Standards for Grades of Extracted Honey, Effective Date May 23, 1985.** The United States Standards for Grades of Extracted Honey adopted by the Agriculture Marketing Service, United States Department of Agriculture effective May 23, 1985 are hereby adopted for the purposes of this rule for extracted honey grades. See Section 018 of this rule. A copy of such federal standards is available at the following USDA Website <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELDEV3011895>. ( )

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

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

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

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

**006. PUBLIC RECORDS ACT COMPLIANCE.**

These rules are public records available for inspection and copying at the Idaho State Department of Agriculture Central Office. ( )

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

**010. DEFINITIONS.**

The Department adopts the definitions set forth in Section 22-2803, Idaho Code. In addition, as used in this chapter, the following definitions apply: ( )

**01. Air Bubble.** The small visible pockets of air in suspension that may be numerous in the honey and contribute to the lack of clarity in filtered style. ( )

**02. Bees.** Honey-producing insects of the genus *Apis* and includes the adults, eggs, larvae, pupae or other immature stages thereof. ( )

**03. Comb.** The wax-like cellular structure that bees use for retaining their brood or as storage for pollen and honey. ( )

**04. Crystallize.** The spontaneous solidification of the natural glucose content from solution as the monohydrate. ( )

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

**06. Floral Source.** The flower from which the bees gather nectar to make honey. ( )

**07. Food.** ( )

**a.** Articles used for food or drink, including ice, for human consumption or food for dogs and cats; ( )

**b.** Chewing gum; and ( )

**c.** Articles used for components of any such article. ( )

**08. Food Additive.** Any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component of or otherwise affecting the characteristics of any food, including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food. It also includes any source of radiation intended for any such use, if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures or experience based on common use in food to be safe under the conditions of its intended use. 'Food additive' does not include: ( )

**a.** A pesticide chemical in or on a raw agricultural commodity; ( )

**b.** A pesticide chemical to the extent that it is intended for use, or is used in the production, storage or transportation of any raw agricultural commodity; or ( )

**c.** A color additive. ( )

**09. Granulate.** The initial formation of crystals in honey. ( )

**10. Honey.** The natural sweet substance produced by bees resulting from the harvest of plant nectar or plant secretions that has been collected and transformed by the deposition, dehydration, and storage in comb to ripen and mature. ( )

**11. Pollen Grain.** The granular, dust-like microspores that bees gather from flowers. Pollen grains in suspension contribute to the lack of clarity in filtered style. ( )

**011. COMPLAINT PROCESS.**

**01. Complaint Contents.** Complaints shall be directed to the department, in writing, and contain the following information: ( )

- a. The name, address and contact information of the complainants; and ( )
- b. The location and brand name of the product which is the subject of complaint. ( )

**02. Initial Review.** The department will forward written complaints to the commission for initial review. ( )

**03. Sampling and Analysis.** Upon review, the commission may request the department to acquire an official sample of the product, in accordance with Title 22, Chapter 28, Idaho Code, and send it to an analytical laboratory that possesses the ability to analyze honey for adulteration, or other testing deemed appropriate in accordance with the nature of the complaint. The laboratory analysis shall be reviewed by the commission and the department for compliance with Title 22, Chapter 28, Idaho Code, and these rules. ( )

**04. Violations.** If, after investigation, the commission and the department find that a violation of title 22, Chapter 28, Idaho Code and/or these rules has occurred the commission and the department shall confer and agree on an appropriate course of action as authorized by Section(s) 22-2811 or 22-2812, Idaho Code. ( )

**012. -- 014. (RESERVED)**

**015. STANDARDS OF IDENTITY - HONEY.**

Honey sold as such shall not have added to it any food additives, nor shall any other additions be made other than honey. It shall not have begun to ferment or effervesce and no pollen or constituent unique to honey may be removed except where unavoidable in the removal of foreign matter. ( )

**01. Treatments.** Chemical or biochemical treatments shall not be used to influence honey crystallization. ( )

**02. Moisture Content.** Honey shall not have a moisture content exceeding twenty-three percent (23%). ( )

**03. Sugars Content.** ( )

a. The ratio of fructose to glucose shall be greater than zero point nine (0.9). ( )

b. Fructose and glucose (Sum of Both) shall not be less than 60g/100g. ( )

c. Sucrose content for honey not listed below shall not be more than 5g/100g. ( )

i. Honey from Alfalfa (*Medicago sativa*), Citrus spp., False Acacia (*Robinia pseudoacacia*), French Honeysuckle (*Hedysarum*), Menzies Banksia (*Banksia menziesii*), Red Gum (*Eucalyptus camaldulensis*), Leatherwood (*Eucryphia lucida*), and Eucryphia milligani shall have sucrose levels not to exceed 10g/100g. ( )

ii. Honey from Lavender (*Lavandula* spp.) and Borage (*Borago officinalis*) shall have sucrose levels not to exceed 15g/100g. ( )

**04. Name of the Food.** Products conforming to the standard of identity as adopted in this rule shall be designated "honey". Foods containing honey and any flavoring, spice, or other added ingredient or honey that is processed in such a way that materially changes the flavor, color, viscosity or other material characteristics of pure honey, shall be distinguished from honey in the food name by declaration of the food additive or modification. ( )

a. Honey may be designated according to floral or plant source if it comes predominately from that particular source and has the organoleptic and physicochemical properties corresponding with that origin. ( )

b. Where honey has been designated according to floral or plant source, as stated in Paragraph

015.04.a., then the common name or the botanical name of the floral source shall be used in conjunction with or joined with the word “honey”. ( )

**c.** Honey may be designated according to the following styles, which style shall be declared on packaging: ( )

**i.** “Honey” - this is honey in liquid or crystalline state or a mixture of the two (2); ( )

**ii.** “Comb Honey” - this is honey stored by bees in the cells of freshly built brood-less combs and which is sold in sealed whole combs or sections of such combs. ( )

**iii.** “Cut Comb in Honey,” “Honey with Comb,” or “Chunk Honey” - this is honey containing one (1) or more pieces of comb honey. ( )

**016. TYPES AND STYLES OF HONEY.**

**01. Extracted Honey.** Honey that has been separated from the comb by centrifugal force, gravity, straining, or other means. It is identified in the following types: ( )

**a.** Liquid Honey. Honey that is free of visible crystals; ( )

**b.** Cystallized Honey. Honey that is solidly granulated or crystallized, irrespective of whether candied, fondant, creamed or spread types of crystallized honey; and ( )

**c.** Partially Crystallized Honey. Honey that is a mixture of liquid honey and crystallized honey.( )

**02. Styles.** Extracted honey styles are: ( )

**a.** Filtered Honey. Honey of any type defined in these standards that has been filtered to the extent that all or most of the fine particles, pollen grains, air bubbles, or other materials normally found in suspension, have been removed. Honey shall not be filtered to less than one point zero (1.0) micron. ( )

**b.** Strained Honey. Honey of any type defined in these standards that has been strained to the extent that most of the particles, including comb, propolis, or other defects normally found in honey, have been removed. Pollen grains, small air bubbles, and very fine particles are not normally removed from strained honey. ( )

**c.** Unfiltered/Unstrained - Unfiltered/Unstrained Honey. Honey that has not been filtered or strained by United States Standards for Grades of Extracted honey and may include extracted or non-extracted honey. ( )

**d.** Raw Honey. Honey that has not been pasteurized. ( )

**017. -- 022. (RESERVED)**

**023. MISBRANDING.**

Food labeled as a honey product, but not meeting the provisions of this rule may be subject to a stop sale order as authorized under Section 22-2812, Idaho Code. ( )

**024. PENALTY.**

Any person violating the provision of these rules shall be subject to the penalty provisions of Title 22, Chapter 28, Idaho Code. ( )

**025. -- 999. (RESERVED)**

## IDAPA 02 – DEPARTMENT OF AGRICULTURE

### 02.06.31 - NOXIOUS WEED FREE FORAGE AND STRAW CERTIFICATION RULES

DOCKET NO. 02-0631-1201

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-2403, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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 scope and purpose of the program will be clarified to address all possible activities of certified forage and straw products and to add that these products are intended for use on Idaho public lands.

A color of certification twine that is no longer used will be deleted from the rules. Add the year on forage tags and the date on the tag must accurately reflect the year in which the bale was produced. Correct typographical errors of plant scientific names and amend several sections to correct a contradiction of when transit certificates need to be issued.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: Not applicable.

**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:

ISDA does not anticipate any fiscal impact from the changes to be made to the Rule during this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2012 Idaho Administrative Bulletin, [Vol. 12-7, page 26](#). A negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on July 19, 2012. No one attended the meeting, however three favorable written comments were received.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: Not applicable.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to Dan Safford and must be delivered on or before October 24, 2012 via email to [dan.safford@agri.idaho.gov](mailto:dan.safford@agri.idaho.gov) or via regular mail to Dan Safford's attention at the address listed below.

DATED this 31st day of August, 2012.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0631-1201

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is the “Noxious Weed Free Forage and Straw Certification Rules.” (3-19-07)

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

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS.**

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

**01. Agent.** Any instrumentality or entity authorized by the director of the department, and acting on behalf of the department, to administer the provisions of this rule. Any designated agent shall act in an official capacity for the department and under the supervision of the director of the department. The principal purpose of the agent is to establish, conduct, and maintain a uniform and reasonable system of inspection and certification of forage and straw crops to determine if such crops are noxious weed free. (3-19-07)

**02. Approved Inspector.** An individual who has been accredited by the department or by the department’s agent in the noxious weed free forage and straw certification program. (3-19-07)

**03. Bale.** A mechanically compressed package of forage or straw bound by string or wire, or other binding material. (3-19-07)

**04. Bale Tag.** A tag or label which is attached to the string or wire, or other binding material of a bale of certified forage or straw, and identifies the bale as being certified noxious weed free. (3-19-07)

**05. Certificate of Inspection.** A record of inspection issued by an approved inspector that states the results of a field or commodity inspection. The certificate shall document that the inspected field or commodity is Idaho State Noxious Weed Free, North American Noxious Weed Free, or that the field or commodity contains noxious weeds. (5-8-09)

**06. Certification.** The process whereby an approved inspector conducts field or commodity inspections to determine that the field or commodity is noxious weed free. (3-19-07)

**07. Certification Markings.** Bale tags, ~~blue and orange colored twine~~, purple and yellow colored twine, compressed forage bale binding material, and forage cubes/pellets container tags/labels. (~~5-8-09~~)(    )

**08. Certified Compressed Forage Bale Binding Material.** An ISDA approved binding material which is attached to a compressed forage bale of certified noxious weed free forage and identifies the bale as being certified to the North American Standards. (5-8-09)

**09. Compressed Forage Bale.** A bale that has been twice compressed, once in the field by a forage baler and then recompressed a second time and bound by string, wire or other binding material. (3-19-07)

- 10. Department.** The Idaho State Department of Agriculture. (3-19-07)
- 11. Field.** The land on which a forage or straw crop is grown and is not divided by streams, public roads, other crops, or other barriers. (3-19-07)
- 12. Field Certification Inspection.** An on-site inspection of forage or straw in the field, and areas adjacent to the field, for the presence of noxious weeds. The inspection shall be conducted prior to cutting or harvesting. (3-19-07)
- 13. Forage.** Alfalfa, grain, and grass hay, and/or combinations of alfalfa, grain, or grass hay; the term “forage” includes forage cubes, compressed forage bales, and pellets. (3-19-07)
- 14. Forage Cubes.** Forage that is harvested from a field certified to North American Standards and is mechanically compacted into wafers or cubes. (3-19-07)
- 15. Forage Cube/Pellet Tag.** A tag, label, or statement which is attached or printed on a container of certified noxious weed free forage cubes or pellets, and identifies the container as being certified to the North American Standards. (5-8-09)
- 16. Idaho State Noxious Weed Free.** Forage and straw inspected for weeds designated by the director as noxious as defined in Section 22-2402(15), Idaho Code, and determined to be free of such weeds. (3-19-07)
- 17. Idaho State Noxious Weed Free Standards.** Forage and straw that meets the requirements Idaho State Noxious Weed Free. (3-19-07)
- 18. North American Noxious Weed Free.** Forage and straw inspected for, and determined to be free of, weeds designated as noxious by the director as defined in Section 22-2402(15) Idaho Code and noxious weeds listed on the North American Weed List. (3-19-07)
- 19. North American Weed Free Forage Certification Program.** The North American Weed Management Association standard for forage certification. (3-19-07)
- 20. North American Twine.** Purple and yellow colored twine that is used to mark bales as certified to the North American Standards. (5-8-09)
- 21. North American Standards.** Requirements of the North American Weed Free Forage Certification Program. (3-19-07)
- 22. Noxious Weed Free.** No noxious weeds with viable seed, injurious portions, or propagating parts were found during inspection procedures. (3-19-07)
- ~~**23. Official Sample.** A sample taken by an approved inspector. (3-19-07)~~
- ~~**243. Pellets.** Forage that is harvested from a field certified to North American Standards and is manufactured into an agglomerated feed, formed by compacting and forcing through die openings by a mechanical process. (3-19-07)~~
- ~~**254. Straw.** The dried stalks or stems remaining after grain is harvested. (3-19-07)~~
- ~~**265. Transit Certificate.** A document completed by an approved inspector to ~~authorize the certify~~ products proposed for movement ~~of as certified~~ noxious weed free ~~certified forage bales or straw bales into or through areas which~~ into states that require noxious weed free forage and straw certification. The transit certificate must be in the possession of the transporter. If individual bales are tagged with an approved bale tag, a transit certificate is not required. (~~3-19-07~~)(      )~~

**(BREAK IN CONTINUITY OF SECTIONS)**



**100. VOLUNTARY NOXIOUS WEED FREE FORAGE AND STRAW CERTIFICATION PROGRAM.**

**01. Purpose.** The noxious weed free forage and straw certification program is a voluntary program, the purpose of which is to provide a means for the inspection, ~~and~~ certification, ~~and marking~~ of forage and straw as noxious weed free. The program will be managed by the department and may be implemented through an agent of the department. The program will allow for the ~~transportation, possession, storage, and sale~~ preparation of a transit certificate for the purpose of interstate transport or shipping of forage and straw into and through states which place regulations and restrictions on such commodities. The program is intended to reduce the exportation, importation, growth, and spread of noxious weeds. (3-19-07)(      )

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

**03. Certification Training.** The department shall determine minimum training and accreditation standards for approved inspectors. Training will be provided annually by the department or its agent. Attendance at annual training will certify accreditation for the inspector for that calendar year. Approved inspectors will be issued a certificate of training for the calendar year. Annual training shall include: (3-19-07)

- a. Field inspection techniques and procedures; (3-19-07)
- b. ISDA and North American Noxious weed list plant identification; (3-19-07)
- c. ISDA and North American certification standards and guidelines; (3-19-07)
- d. Knowledge of weed management, including: (3-19-07)
  - i. Burning; (3-19-07)
  - ii. Mowing, cutting or roguing; (3-19-07)
  - iii. Mechanical methods; and (3-19-07)
  - iv. Herbicides. (3-19-07)
- e. Inspection forms. (3-19-07)

**04. Certification Program.** (3-10-00)

- a. The department or its agent shall: (3-10-00)
  - i. Coordinate forage and straw inspections within the state; (3-10-00)
  - ii. Select, train, and supervise persons who serve as approved inspectors; (3-10-00)
  - iii. Issue certificates of inspection, transit certificates, North American Twine, forage cubes/pellets tags/labels, certified compressed forage bale binding material, and bale tags to qualifying participants; (3-19-07)
  - iv. Maintain a record of inspections performed and certificates and tags issued; (7-1-94)
- b. Under the direction of the department or its agent an approved inspector may perform inspections and issue certificates of inspection, transit certificates, North American Twine, forage cubes/pellets tags/labels, and bale tags within the state at cost. (3-19-07)

**05. Application for Certification.** (7-1-94)

**a.** Application for certification inspection shall be made on forms available from the department or its agent and submitted to the department or its agent. (5-8-09)

**b.** An applicant's signature on the application for certification is verification of the accuracy of the information submitted, and signifies the applicant's intent to comply with the post-certification and distribution requirements. (3-10-00)

**06. Field Inspection Procedures.** (7-1-94)

**a.** Forage or straw shall be inspected within ten (10) days prior to harvest in the field of origin for each field and cutting to be certified. (3-19-07)

**b.** Each field inspected shall be identified by the name of the owner and a field name or number. The certification inspection may be performed on an entire field or a portion of a field, if the portion is plainly marked and identified prior to inspection. (3-10-00)

**c.** Field inspections must take place prior to any operation that will limit the approved inspector's ability to properly inspect and certify the field. Fields that have been cut or harvested prior to inspection are ineligible for certification. (3-19-07)

**d.** There shall be a minimum of two (2) entry points per field. (3-19-07)

**e.** There shall be minimum of one (1) entry point per each ten (10) acres. (3-19-07)

**f.** Each point of entry shall be at least one-hundred fifty (150) feet into the field, and each additional one-hundred fifty (150) feet traveled shall constitute an entry point. Travel shall be uninterrupted, proceeding through the field being inspected. (3-19-07)

**g.** The entire field border shall be physically inspected. (3-19-07)

**h.** The field inspection will include all ditches, fence rows, roads, easements, rights-of-way, or buffer zones surrounding the field. (3-19-07)

**i.** Forage which contains any noxious weeds as identified in Section 22-2402(15) or noxious weeds listed on the North American Noxious Weed List, may be certified if the following requirements are met: (3-19-07)

**i.** Field upon which the forage was produced was treated to prevent seed formation or seed ripening to the degree that there is no danger of dissemination of the seed, or any injurious portion thereof from such noxious weeds, or undesirable plant species, or the propagating parts of the plant are not capable of producing a new plant; (3-19-07)

**ii.** Noxious weed(s) were treated not later than rosette to bud stage, or boot stage for grass species classified as noxious weeds, prior to cutting or harvesting; and (3-19-07)

**iii.** Treatment method can include, but is not limited to burning, mowing, cutting or roguing, mechanical methods, or chemicals. (3-19-07)

**j.** An inspection certificate shall document that the above requirements have been met. (3-19-07)

**k.** Baling equipment must be cleaned of any noxious weeds prior to harvesting certified forage. If the baling equipment is not cleaned, the first three (3) small square bales or the first large round or square bale produced shall be considered non-certified. (3-19-07)

**l.** Interstate shipment of baled forage and straw shall be accompanied by an original transit certificate issued by the approved inspector in the county of origin. If individual bales are tagged with an approved bale tag, a transit certificate is not required. The storage area shall also be inspected and shall be free of noxious weeds. (3-19-07)( )

**m.** An approved inspector may not inspect fields of which said inspector has ownership or financial interest. (3-19-07)

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

**a.** If the field or commodity inspected is certified as North American Noxious Weed Free, the approved inspector shall issue a certificate of inspection for that harvest or cutting. If the field or commodity contains North American Noxious Weeds, but does not contain Idaho State noxious weeds, it may be certified as Idaho State noxious weed free, and such certification shall be noted on the certificate of inspection. (3-19-07)

**b.** If the field or commodity inspected is certified as noxious weed free, as defined in these rules, the approved inspector may also issue, upon request, any of the following documents: (3-19-07)

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

**ii.** Bale tags. The date on the bale tag must accurately reflect the year in which the bale was produced.  
(7-1-94)( )

**iii.** North American Twine only if the field or commodity is certified as North American Noxious Weed Free. (3-19-07)

**iv.** Forage cube/pellet tag/labels only if the field or commodity is certified as North American Noxious Weed Free. (3-19-07)

**v.** Certified compressed forage bale binding material only if the field or commodity is certified as North American Noxious Weed Free. (3-19-07)

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

**d.** North American Twine and bale tags must be purchased from the department or its agent. (5-8-09)

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

**09. Reciprocity.** Forage or straw certified under a reciprocal agreement between the department and another state, and certified as North American Noxious Weed Free according to the other state's approved certification standards, may be shipped into the state of Idaho and shall be considered to meet the requirements of the Idaho program. (3-19-07)

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

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

**12. Post-Certification and Distribution Requirements.** After a producer's commodity has been inspected and certified, the producer shall: (3-19-07)

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

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

c. Attach bale tags, certified compressed forage bale binding material, or North American Twine to each bale of certified forage or straw intended for sale as noxious weed free forage or straw prior to the bales leaving the producers stack yard or storage area; and (3-19-07)

d. Attach cube/pellet tag/label to each container of certified forage cubes/pellets intended for sale as noxious weed free forage prior to the containers leaving the producer's facility. (3-19-07)

e. Provide the shipper, trucker, or transporter with the appropriate number of transit certificates. If individual bales are tagged with an appropriate bale tag, a transit certificate is not required. ~~(3-10-00)~~( )

**13. Cancellation for Failure to Comply.** Any person who provides false information on an application for inspection or who fails to comply with the post-certification and distribution requirements may, upon order of the director, be suspended for a period of up to two (2) years from participating in the forage and straw certification program. (7-1-94)

**14. Enforcement and Cancellation.** Harvested lots of forage or straw from certified fields may be checked at any time by an approved inspector. Manufactured lots of forage cubes, pellets, and compressed forage bales may be checked at any time by an approved inspector. Evidence that forage, straw, forage cubes/pellets, or compressed forage bales are not from a certified field or that any lot has not been protected from contamination shall be cause for cancellation of certification. (3-19-07)

**15. Misuse of Transit Certificate and Certification Markings.** Using a transit certificate or certification marking for forage from a field that has not been certified shall constitute a violation of these rules. (3-19-07)

**16. Certification Fees.** A minimum of thirty dollars (\$30) per inspection shall be charged for up to ten (10) acres, and three dollars (\$3) per acre thereafter, for fields up to ninety-nine (99) acres. Fields that are one-hundred (100) acres or larger in size, the fee is three dollars (\$3) per acre for the first one-hundred (100) acres and two dollars (\$2) per acre thereafter. The agent is authorized to assess a general fee of thirty dollars (\$30) per year to recover overhead costs. The agent may waive the general fee if the applicant has already been assessed a similar fee for other types of crop inspections. (3-19-07)

**101. -- 149. (RESERVED)**

**150. NORTH AMERICAN NOXIOUS WEED LIST.**

Common Name	Scientific Name
Absinth wormwood	<i>Artemisia absinthium</i>
Bermudagrass	<i>Cynodon dactylon</i>
Buffalobur	<i>Solanum rostratum</i>
Canada thistle	<i>Cirsium arvense</i>
Common burdock	<i>Arctium minus</i>
Common crupina	<i>Crupina vulgaris</i>
Common tansy	<i>Tanacetum vulgare</i>
Dalmatian toadflax	<i>Linaria dalmatica</i>
Diffuse knapweed	<i>Centaurea diffusa</i>
Dyers woad	<i>Isatis tinctoria</i>
Field bindweed	<i>Convolvulus arvensis</i>
Hemp (marijuana)	<i>Cannabis sativa</i>

Common Name	Scientific Name
Henbane, Black	<i>Hyoscyamus niger</i>
Hoary cress	<i>Cardaria spp.</i>
Horsenettle	<i>Solanum carolinense</i>
Houndstongue	<i>Cynoglossum officinale</i>
Johnsongrass	<i>Sorghum halepense</i>
Jointed goatgrass	<i>Aegilops cylindrica</i>
Leafy spurge	<i>Euphorbia esula</i>
Matgrass	<i>Nardus stricta</i>
Meadow knapweed	<i>Centaurea pratensis</i>
Medusahead	<i>Taeniatherum caput-medusae</i>
Milium	<i>Milium vernale</i>
Musk thistle	<i>Carduus nutans</i>
Orange hawkweed	<i>Hieracium aurantiacum</i>
Oxeye daisy	<i>Chrysanthemum leucanthemum</i>
Perennial pepperweed	<i>Lepidium latifolium</i>
Perennial sorghum	<i>Sorghum almum</i>
Perennial sowthistle	<i>Sonchus arvensis</i>
Plumeless thistle	<i>Carduus acanthoides</i>
Poison hemlock	<i>Conium maculatum</i>
Puncturevine	<i>Tribulus terrestris</i>
Purple loosestrife	<i>Lythrum salicaria</i>
Quackgrass	<i>Agropyron repens</i>
Rush skeletonweed	<i>Chondrilla juncea</i>
Russian knapweed	<i>Centaurea repens</i>
Scentless chamomile	<i>Matricaria perforata</i> or <i>M. milaceum</i>
Scotch broom	<i>Cytisus scoparius</i>
Scotch thistle	<i>Onopordum acanthium</i>
Sericea Lespedeza	<i>Lespedeza cuneata</i>
Silverleaf nightshade	<i>Solanum elaeagnifolium</i>
Skeletonleaf bursage	<i>Ambrosia tomentosa</i>
Spotted knapweed	<i>Centaurea maculosa</i>
Squarrose knapweed	<i>Centaurea virgata</i>
St. Johnswort	<i>Hypericum perforatum</i>
Sulfur cinquefoil	<i>Potentilla recta</i>

Common Name	Scientific Name
Syrian beancaper	<i>Zygophyllum fabago</i>
Tansy ragwort	<i>Senecio jacobaea</i>
Toothed spurge	<i>Euphorbia dentata</i>
Wild oats	<i>Avena fatua</i>
Wild proso millet	<i>Panicum miliaceum</i>
Yellow hawkweed	<i>Hieracium pratense</i>
Yellow starthistle	<i>Centaurea solstitialis</i>
Yellow toadflax	<i>Linaria vulgaris</i>

(5-8-09)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**250. CERTIFICATION MARKING.**

Each certified bale or container shall be marked by one (1) of the following: (3-19-07)

**01. North American Twine.** Only one (1) strand is required per bale. (3-19-07)

**02. Forage Tag.** The following information shall be shown on baled forage and straw: (5-8-09)

**a.** The words - “North American Weed Free Forage Certification Program” or “Idaho State Noxious Weed Free Forage & Straw Certification Program”; (3-19-07)

**b.** Bale tag serial number; (3-19-07)

**c.** County of origin identification; (3-19-07)

**d.** ISDA emblem; (3-19-07)

**e.** ISDA telephone number; and (3-19-07)

**f.** A statement that the product is “Certified to the North American Standards” or “Certified to the Idaho State Noxious Weed Free Standards.” (3-19-07)

**g.** Year the bale tag was issued. ( )

**03. Forage Cube/Pellet Tag/Label.** Certification tags/labels shall be attached to or a statement with the following information shall be printed on each container of noxious weed free product: (3-19-07)

**a.** The words - “North American Weed Free Forage Certification Program”; (3-19-07)

**b.** ISDA forage manufacturer identification number; (3-19-07)

**c.** ISDA emblem; (3-19-07)

**d.** ISDA telephone number; and (3-19-07)

**e.** A statement that the product is “Certified to the North American Standards.” (3-19-07)

**04. Certified Compressed Forage Bale Binding Material.** The following information shall be printed in purple ink on yellow binding material. Two (2) consecutive vertical purple lines approximately one-eighth of an inch (1/8") wide, spaced approximately one and one-quarter inches (1 1/4") apart, placed before and after written text which includes the acronym "ISDA NWFFS" and can include the manufacturer's name. (5-8-09)

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.06.33 - ORGANIC FOOD PRODUCT RULES

#### DOCKET NO. 02-0633-1201 (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 22-1103, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

The proposed rule provides industry with a new optional seal for promotion purposes, and a new optional registration of branded materials for organic use.

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

ISDA may charge fees no greater than the following amounts to those persons desiring to register branded materials with the Organic Foods Program:

1. \$200 initially, and annually thereafter, to persons already accredited by another qualifying materials entity;
2. \$500 initially, and from \$500 to \$5000 annually relative to the amount of annual sales of the registered materials.

**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 impact on the general fund. The Organic Food Program Fund 0332-10 will have increased annual revenue estimated at \$10,000 to \$20,000 to cover estimated costs of providing services to industry.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 4, 2012 Idaho Administrative Bulletin, [Vol. 12-7, Page 27](#). A negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on July 16.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Brandon Lamb, Program Manager at (208) 332-8675.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to Brandon Lamb and must be delivered on or before October 24, 2012. Comments can be delivered via email to [Brandon.Lamb@agri.idaho.gov](mailto:Brandon.Lamb@agri.idaho.gov) or via regular mail to Brandon Lamb's attention at the address listed below.

DATED this 31st day of August, 2012.

Brian J. Oakey, Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Rd.  
P.O. Box 790

Boise, Idaho 83701  
Phone: (208) 332-8500  
Fax: (208) 334-2170



**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 02-0633-1201**

**010. DEFINITIONS.**

**01. Agent.** Any entity accredited by the Secretary of the United States Department of Agriculture as a certifying agent for the purpose of certifying a production or handling operation. (3-19-07)

**02. Certification.** A document issued by the Department to a producer/handler who is in compliance with this rule who has more than five thousand dollars (\$5,000) annual gross organic sales. (3-19-07)

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

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

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

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

**07. Handler.** Any person engaged in the business of handling agricultural products, including producers who handle crops or livestock of their own production, except such term shall not include final retailers of agricultural products that do not process agricultural products. (4-2-08)

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

**09. Materials.** Any substance or mixture of substances that is intended to be used in agricultural production, processing, or handling. ( )

**~~09~~10. Organic Certification Seal.** The design approved by the director and which when imprinted or affixed on labels, packages or products, or used in advertising in any manner, shall signify that the standards and rules developed in accordance with the provisions of Chapter 11, Title 22, Idaho Code, and all other conditions of the provisions of that chapter have been met. (4-2-03)

**~~10~~1. Organic Food Product.** Any food product that is marketed using the term organic, or any derivative of the term organic in its labeling or advertising. Organic foods are those processed, packaged, transported and stored to retain maximum nutritional value, without the use of artificial preservatives, coloring or other additives, irradiation, or synthetic pesticides. (4-2-03)

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

**~~12~~3. Person.** Any individual, partnership, association, corporation, cooperative, or other entity. (4-2-08)

**~~13~~4. Producer.** A person who engages in the business of growing or producing food, fiber, feed, or other agricultural-based consumer products. (4-2-08)

**~~14~~5. Registration.** (3-19-07)

**a.** A document issued by the Department to an organic producer/handler who has five thousand

- dollars (\$5,000) or less annual gross organic sales; or (3-19-07)
- b. A document issued by the Department to an agent certifying organic producers/handlers in the state of Idaho; or (3-19-07)
  - c. A document issued by the Department to a producer/handler certified by an agent other than the Department. (3-19-07)
- 156. Vendor.** Any person who sells organic food products to the consumer or another vendor. (4-2-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**200. IDAHO ORGANIC CERTIFICATION SEAL.**

**01. Description of Seal.** ~~The Idaho seal must replicate the form and design of the example in Figure 1 and must be printed legibly and conspicuously.~~ Certified operations that become certified for the first time prior to July 1, 2013 may continue to use the seal depicted in Figure 1. Certified operations that become certified for the first time July 1, 2013 and later may only use the seal in Figure 2.

**FIGURE 1**



**FIGURE 2**



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

**02. Utilization of Seal.** The Idaho organic certification seal as approved by the director and as shown in Figure 1 and Figure 2, may be imprinted or affixed on labels, packages or products, or used in advertising in any manner, shall signify that the standards and rules developed in accordance with the provisions of this rule and all other conditions of the provisions of this chapter have been met. ~~(4-2-03)~~( )

**a.** Any container manufacturer may apply for authorization to imprint facsimiles of the ISDA organic certification seal on containers of organic products. (4-2-03)

**b.** Authorization granted to imprint facsimile seals shall be subject to review by the director on an annual basis, or more frequently if necessary. (4-2-03) ( )

**201. REGISTRATION OF APPROVED MATERIALS.**

The director may establish a list of registered branded materials for use in organic production, processing, or handling. ( )

**01. Registration.** Registration is voluntary. ( )

**a.** All applicants applying for registration of materials must submit the application to the Department on forms prescribed by the Department. ( )

**b.** An applicant for materials registration must demonstrate that the material meets the requirements and standards of the National Organic Program. Specifically, the material may not be a material prohibited for use in the production, processing, or handling of organic products by 7 C.F.R. Section 205.105, and may not be otherwise prohibited for use in organic production, processing, or handling by the National Organic Program. ( )

**02. Effect of Registration.** The fact that a material is registered is not a guarantee that the registered material will be acceptable for use by certified organic producers, processors, or handlers or other organic certifying agencies other than ISDA. ( )

**03. Department Not Liable.** The Department is not liable for any losses or damages that occur as a result of any person's use of any registered branded material. The Department is not liable for any losses or damages that result from delays that occur in the registration process due to lack of resources or expertise. ( )

**04. Registration Fees.** The Director may charge the following fees, which are nonrefundable and are not to exceed the stated amounts. ( )

**a.** Operations that hold a current approval from a reputable third party accredited material evaluation program such as the Environmental Protection Agency, an NOP Accredited Certifying Agent, or ISO Guide 65 for the material(s) which it is seeking to register in Idaho must pay two hundred dollars (\$200) for an initial registration application fee, and two hundred dollars (\$200) each year thereafter for renewal of the registration. ( )

**b.** All other operations will be charged an initial registration application fee not to exceed five hundred dollars (\$500), and must pay an annual fee based on registered branded materials sales volume, not to exceed the following amounts:

<b><u>Annual Sales</u></b>	<b><u>Annual Fees</u></b>
<b><u>\$0 to \$20,000</u></b>	<b><u>\$500</u></b>
<b><u>\$20,001 to \$75,000</u></b>	<b><u>\$2,500</u></b>
<b><u>\$75,000 and above</u></b>	<b><u>\$5,000</u></b>

( )

**c.** All operations must pay initial and annual inspection fees to keep their product registered. ( )

**05. Initial and Annual Inspection Fees.** ( )

**a.** The hourly rate for inspections is fifty dollars (\$50), including travel time. ( )

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

**c.** There will be a minimum charge of fifty dollars (\$50) plus mileage for any inspection. ( )

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

**e.** A per diem, lodging, and travel as allowed by state and ISDA rules, and any other out of pocket costs incurred by ISDA in conducting annual or initial certification inspections will be charged to the operation. ( )

**f.** Upon approval by ISDA, private inspectors may be utilized. The applicant or operator will bear the total cost of the private inspection. ( )

**06.** Seal for Registered Branded Materials. When a material is registered and added to the list of registered branded materials, the Director will approve the use of the seal in Figure 3 on the packaging and in the promotions for the sale of the registered material subject to the National Organic Program and Idaho state rules:

**FIGURE 3**



( )

**07.** Revocation of Registration. If at any time the registered material is determined to be not suitable for organic use, the Director may revoke the registration of the branded material, remove the material from the list of registered branded materials, and revoke authorization to use the seal shown in Subsection 201.06. ( )

~~2012.~~ -- 299. (RESERVED)

**IDAPA 02 - DEPARTMENT OF AGRICULTURE**  
**02.06.35 - RULES GOVERNING ROUGH BLUEGRASS (*POA TRIVIALIS*)**

**DOCKET NO. 02-0635-1201**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-2006, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

Amending Section 101 - Qualification of Regulated Articles for Quarantine Release - to allow for the use of a certificate of analysis in lieu of tags.

Amending Section 102 - Rough Bluegrass Quarantine Inspections - to allow for inspection by the Idaho Crop Improvement Association.

**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:

ISDA does not anticipate any fiscal impact as a result of this rule change.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 4, 2012 Idaho Administrative Bulletin, [Vol. 12-7, Page 28](#). A negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on July 17, 2012; there were no visitors in attendance at the meeting, nor were any comments received.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to Michael E. Cooper and must be delivered on or before October 24, 2012. Comments can be delivered via email to [Mike.Cooper@agri.idaho.gov](mailto:Mike.Cooper@agri.idaho.gov) or via regular mail to Michael E. Cooper's attention at the address listed below.

DATED this 31st day of August, 2012.

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

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 02-0635-1201

**101. QUALIFICATIONS OF REGULATED ARTICLES FOR QUARANTINE RELEASE.**

**01. Planting Seed Stock of Regulated Articles.** Any person planting seed stock of regulated articles shall comply with the following requirements: (3-30-01)

**a.** Submit to the Director an official laboratory analysis of a representative sample showing freedom from rough bluegrass based on a five (5) gram sample for bentgrass or redtop, a twenty-five (25) gram sample for bluegrass, or a fifty (50) gram sample for other grasses; or (3-30-01)

**b.** Submit to the Director a representative sample for laboratory analysis. (3-30-01)

**02. Quarantine Release Tag.** Upon receipt of an official seed laboratory analysis, the Director may upon request issue sequentially numbered tags for each bag of regulated article found free of rough bluegrass. (3-30-01)

**03. Analysis Certificate.** In lieu of tags, a seed analysis certificate from an official seed laboratory showing each lot being planted to be free from rough bluegrass must be kept on file for a minimum of one (1) year after all of the inventory of that lots harvested seed has been sold. ( )

**102. ROUGH BLUEGRASS QUARANTINE - INSPECTIONS.**

The Director shall cause inspections to be made in accordance with the provisions of Section 22-2007, Idaho Code. (5-3-03)

**01. Infested Seed Stock.** Lots of turf seed stock contaminated with rough bluegrass seeds may be planted in an approved nursery of two (2) acres or less under the supervision of the Director. The nursery shall be seeded in rows spaced twenty-four (24) inches apart and it shall be the duty of the person receiving such seed stock to rogue the planting or chemically treat to eradicate the rough bluegrass. The approved nursery shall be inspected by the Department or the Idaho Crop Improvement Association at least three (3) times during the seedling year. Any approved nursery not passing inspection shall not be harvested but shall be destroyed upon the order of the Director at the owner's expense. (~~3-20-97~~)( )

**02. Application for Nursery Inspection.** A person shall make application for nursery inspection to the Director or the Idaho Crop Improvement Association at least fourteen (14) days prior to planting. (~~3-20-97~~)( )

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.06.41 - RULES PERTAINING TO THE IDAHO SOIL AND PLANT AMENDMENT ACT OF 2001

DOCKET NO. 02-0641-1201

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

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 22-2204, Idaho Code.

**DESCRIPTIVE SUMMARY:** The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the July 4, 2012 Idaho Administrative Bulletin, [Vol. 12-7, pages 29 and 30](#).

**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:

ISDA does not anticipate any fiscal impact from the changes to be made to the Rule as a result of this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Kathryn Mink, Agriculture Section Manager at (208) 332-8564.

DATED this 31st day of August, 2012.

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

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#### DOCKET NO. 02-0641-1201 - ADOPTION OF PENDING RULE

No substantive changes have been made to the pending rule.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 12-7, July 4, 2012, pages 29 and 30](#).

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2013 Idaho State Legislature for final adoption.

## **IDAPA 03 - STATE ATHLETIC COMMISSION**

### **03.01.01 - RULES OF THE STATE ATHLETIC COMMISSION**

#### **DOCKET NO. 03-0101-1201 (FEE RULE)**

#### **NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-416, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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 Athletic Commission is changing its rules to clarify requirements for male and female combatants age twelve and under. The Commission is adding a rule requiring promoters to report event results and injuries to a relevant reporting organization. Glove requirements for combatants are also being clarified. The term of a license and fees are being clarified to establish there is no penalty for non-renewal. The sanctioning event permit fee is being increased from \$200 per event to \$1,000 per event to offset the Commission's expenses incurred in approving and overseeing an event.

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

Fees are being clarified to establish that an applicant pays a combined application license fee each year. The sanctioning event permit fee is being increased from two hundred dollars (\$200) per event to one thousand dollars (\$1,000) per event.

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

There is no impact on the general fund. The sanction permit fee is being increased from \$200 per event to \$1000 per event to offset the Commission's expenses incurred in approving and overseeing an event.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Athletic Commission discussed the proposed changes in scheduled noticed Commission meetings.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

Tana Cory, Bureau Chief  
Bureau of Occupational Licenses  
700 W. State Street

Boise, ID 83702  
(208) 334-3233 Ph.  
(208) 334-3945 fax



THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 03-0101-1201

103. PHYSICAL EXAMINATION OF COMBATANT (RULE 103).

01. **Examination by Physician.** Any combatant who has applied for a license ~~or a renewal of his license~~ must be examined by a physician. The physician will establish the combatant's physical and mental fitness for competition. ~~(5-8-09)~~( )

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

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

04. **Blood Testing.** The Commission will not issue a license to an athlete, or allow an athlete to compete in an event, if the athlete, within the six (6) months immediately preceding the application for licensure or the event at which the licensee wishes to compete, has tested positive for the HIV virus, Hepatitis B Surface Antigen and Hepatitis C Antibody, or illegal drugs or other substances. Accordingly, when an athlete applies for a license, the athlete must submit with the application a blood test report from a blood test conducted within the six (6) months preceding the application date. The blood test must have tested the athlete for HIV virus, Hepatitis B Surface Antigen, Hepatitis C Antibody, and illegal drugs and substances. Additionally, each combatant who is to compete in an event shall, at the start of the event, provide the Commission with a blood test report from a blood test conducted within the six (6) months immediately preceding the event. Additional blood tests may be requested by the Commission in its discretion. (3-29-10)

~~05. **Male Combatant Age Twelve and Under.** A male combatant age twelve (12) or under shall not be subject to a drug test for a license. ( )~~

104. FEES (RULE 104).

01. **Application/License or Permit Fee.** ~~The combined~~ Application/License or Permit fee: ~~(3-26-08)~~( )

a. Combatant - one hundred fifty dollars (\$150). (3-21-12)

b. Non-combatant - one hundred fifty dollars (\$150). (3-21-12)

c. Matchmaker - two hundred fifty dollars (\$250). (3-21-12)

d. Promoter - one thousand dollars (\$1000). (3-21-12)

e. Sanction permit - ~~two hundred~~ one thousand dollars (~~\$200~~1,000). ~~(3-21-12)~~( )

f. Ring official - one hundred fifty dollars (\$150). (3-21-12)

02. ~~Renewal of License/Permit Refund of Fees.~~ ~~Annual renewal fee:~~ All application and license or permit fees submitted shall be non-refundable regardless of issuance of a license or permit. ~~(3-26-08)~~( )

~~a. Combatant one hundred fifty dollars (\$150). (3-21-12)~~

~~b. Non-combatant one hundred fifty dollars (\$150). (3-21-12)~~

~~c. Matchmaker two hundred fifty dollars (\$250). (3-21-12)~~

- ~~d. Promoter—seven hundred fifty dollars (\$750). (3-21-12)~~  
~~e. Ring official—one hundred fifty dollars (\$150). (3-21-12)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**107. FEMALE COMBATANTS (RULE 107).**

- 01. Qualifications.** A female combatant must be qualified to perform as a combatant before she enters a contest. (3-26-08)
- 02. Limitation.** A female combatant will not engage in a contest with a male combatant. (5-8-09)
- 03. General Requirements.** In addition to meeting such requirements of this chapter as are applicable to combatants generally, a female must: (5-8-09)
- a.** Submit to pregnancy test within fourteen (14) days of the contest. (5-8-09)
- b.** Use a mouthpiece specially designed for her mouth; (3-3-94)
- c.** Wear ten (10) ounce gloves in a boxing contest; (3-26-08)
- d.** Wear a breast protector as a binder; (3-3-94)
- e.** Have her hair secured in a manner that does not interfere with the vision or safety of either combatant; and (3-26-08)
- f.** For each contest in which she competes, have two (2) uniforms in contrasting colors, each uniform consisting of a body shirt, blouse, and shorts. (3-3-94)
- 04. Addendum Requirement.** A female combatant must, in addition to signing the contract, sign an addendum certifying that the combatant is not pregnant and that the contest will not take place during a menstrual period. (5-8-09)
- 05. Limitation on Contest.** A contest between female combatants must be limited to ten (10) rounds of two (2) minutes duration. (3-26-08)
- 06. Separate Dressing Rooms.** The promoters of a contest between female combatants must provide them with adequate separate dressing rooms. (5-8-09)
- 07. Annual Physical Examination.** The annual physical examination of a female combatant must include an examination of the pelvis. Before each contest, the examining physician must make an abdominal examination and must examine the breasts and note any masses. (5-8-09)
- 08. Female Combatants Twelve and Under.** A female combatant age twelve (12) and under shall not be subject to a drug test for a license but the submission of a pregnancy test prior to a contest shall be at the discretion of the physician. The physical examination of a female combatant age twelve (12) and under shall not include a breast or pelvic examination. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**111. REQUIREMENTS FOR LICENSE AS RING OFFICIAL (RULE 111).**

- 01. Qualifications.** To qualify for a license as a ring official of contests, an applicant must: (5-8-09)
- a.** Be at least twenty-one (21) years of age. The Commission may, for good cause shown, lower the minimum age limit for a particular applicant to eighteen (18) years of age; (3-29-10)
  - b.** Have no record of conviction of a felony or other crime involving moral turpitude unless approved by the commission; (3-26-08)
  - c.** Have had at least one (1) year experience in either amateur or professional contest as a ring official; (5-8-09)
  - d.** Submit verifications from three (3) persons of his proficiency as a ring official; and (5-8-09)
  - e.** Provide proof that the applicant meets the other requirements of the commission law and rules. (3-26-08)
- 02. Equivalent Qualifications.** In lieu of the above qualifications, the Commission may accept satisfactory evidence of equivalent qualifications possessed by an applicant who: (5-8-09)
- a.** Is currently licensed in another state or country; or (3-3-94)
  - b.** Formerly held an Idaho license which lapsed in good standing. (3-26-08)
- 03. Other Functions.** A person holding a current Idaho license or who formerly held an Idaho license which lapsed in good standing may be licensed by the Commission without examination or internship to perform an officiating function other than that for which he is or was licensed if the Commission determines that he is qualified to perform that function. (3-3-94)
- 04. Ring Officials Determination.** The Commission will determine when additional ring officials are needed and when licensing examinations for ring officials will be conducted. (3-3-94)
- ~~**05. Validity of Licenses.** Each license issued by the commission is annually renewable in accordance with Section 67-2614, Idaho Code. The renewal of a license is not automatic. The applicant's past performance and abilities may be considered in evaluating an application for renewal. (5-8-09)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

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

- ~~**01. Expiration Date.** All issued licenses expire ~~and must be renewed~~ annually ~~in accordance with Section 67-2614, Idaho Code. Licenses not renewed prior to expiration shall be cancelled. A license may be re-issued upon submission of a new application and subject to the terms of these rules.~~ (3-26-08)( )~~
- ~~**02. Reinstatement.** Any license canceled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code. (3-26-08)~~
- ~~**03. Cancelled License.** A license that has been canceled for a period of more than five (5) years may be re-issued in accordance with section 67-2614, Idaho Code. (3-26-08)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

210. -- ~~2987~~. (RESERVED)

**298. EVENT RESULTS AND MEDICAL REPORTING (RULE 298).**

An event promoter shall accurately report the results of all combatant contests, including combatant injuries, within thirty (30) days after the event, to those relevant national reporting organizations as designated by the Commission. The event promoter shall further pay any costs or expenses associated with such event reporting. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

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

**01. Regulation of Marital Arts and MMA.** Except to the extent set forth under Rules 731-799, all requirements and the limitations relating to combatants and licenses (as set forth within Title 54, Chapter 4, Idaho Code, and in the remaining rules of the Commission) will apply to all martial arts and MMA contests and exhibitions. Notwithstanding the foregoing, at its sole discretion, the Commission may (by specific reference in the sanctioning permit) allow the use of other requirements and limitations during a particular martial arts contest or exhibition.

(5-8-09)

**02. Practices, Belt Promotions, and Non-Contact Demonstrations.** Martial arts practices, belt promotion testing and demonstrations (as used herein the term demonstrations means displays that do not involve combative contact between combatants or between participants) conducted by martial arts schools are not considered to be boxing. Such practices, testing, and demonstrations are exempt from the licensing requirements of Title 54, Chapter 4, Idaho Code, and persons do not need a license to participate in such practices, testing, and demonstrations.

(3-29-10)

**03. Licensing Exemption.** Martial arts schools that meet the conditions set forth within Section 54-406(3)(b), Idaho Code, may apply to the Commission for exemption from licensing and sanctioning permit requirements relating to exhibitions and contests.

(3-29-10)

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

(4-6-05)

**05. Boxing Gloves.** The requirement set forth in Section 54-414, Idaho Code, of wearing boxing gloves applies to kickboxing but will not apply to any other form of martial art unless the use of boxing gloves is required by the official rules of that particular art. Any gloves utilized must be in good condition as approved by the commission. For the main and semi main events, gloves must be in new condition, ~~and~~ of the same brand for combatants, and furnished by the promoter. ~~(5-8-09)~~( )

**732. MMA EQUIPMENT (RULE 732).**

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

(5-8-09)

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

(5-8-09)

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

(5-8-09)

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

(5-8-09)

**c.** Dislodged Mouthpiece. If the mouthpiece is dislodged during the contest, the referee will wait until the first opportune moment, without interfering with the action, call time out, and have the mouthpiece replaced. (5-8-09)

**d.** Violations. At the discretion of the referee, points may be deducted or a disqualification rendered in the following situations: (5-8-09)

i. When the mouthpiece is not being properly kept inside of the combatant's mouth; (5-8-09)

ii. When the mouthpiece is purposely spit out; or (5-8-09)

iii. When the corner fails to have the combatant resume competition with the mouthpiece in place or delays in replacing the mouthpiece after it becomes dislodged. (5-8-09)

**02. Commission Approved MMA Gloves.** (5-8-09)

**a.** General. The gloves must be examined by the Commission and the referee. If padding in the gloves is found to be misplaced or lumpy, or if any gloves are found to be imperfect, they must be changed before the contest starts. No breaking, roughing or twisting of gloves is permitted. (5-8-09)

**b.** Weight. Each combatant must wear gloves that are not less than four (4) ounces in weight; (5-8-09)

**c.** Specifications. Each combatant must wear open finger gloves that have no padding in the palm or fingertip area and that are appropriate in weight for the combatant's hand size. Under no circumstances will a combatant be allowed to wear bag gloves or any other gloves with metal or plastic inserts. (5-8-09)

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

**e.** Extra set. Each promoter must have an extra set of gloves of the appropriate weight available at the glove table to be used in case gloves are broken or otherwise damaged. ( )

**03. Commission Approved Attire.** (5-8-09)

**a.** Each combatant must wear a foul-proof groin protector. (5-8-09)

**b.** Each female combatant must wear Commission-approved form fitting breast support protection. Supports may not have brace, metal or hard material of any kind. (5-8-09)

**c.** For male combatants, no body shirts or pants are allowed. Female combatants must wear fighting shorts and rash guard. (5-8-09)

**d.** Combatant may only use soft materials to tie hair. (5-8-09)

**04. Prohibited Equipment and Attire.** (5-8-09)

**a.** The following equipment and attire are prohibited: (5-8-09)

i. Shoes; (5-8-09)

ii. Facial hair, if determined by the Commission to pose a health, safety or sanitary issue; (5-8-09)

iii. Tar material on any part of the body; (5-8-09)

iv. Henna-type tattoos; (5-8-09)

- v. Piercing accessories; and (5-8-09)
- vi. Makeup of any kind. (5-8-09)
- b. Masks, costumes, and props must be approved by the Commission prior to usage. (5-8-09)
- c. Fingernails and toenails must be cut and trimmed prior to a contest. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**803. WRESTLERS -- PHYSICAL EXAMINATION (RULE 803).**

Any person applying for ~~or renewing~~ a license as a wrestler must first be examined by a physician approved by the Commission to establish physical and mental fitness. A wrestler will be furnished a list of approved examining physicians by the Commission. The Commission may order the examination of any wrestler for the purpose of determining whether the wrestler is fit and qualified to engage in further exhibitions. ~~(3-3-94)~~( )

# **IDAPA 06 - BOARD OF CORRECTION**

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

**DOCKET NO. 06-0101-1202**

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

**EFFECTIVE DATE:** The effective date of this rule is November 2, 2012.

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

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

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

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

013. Department Fee Structure – This is a new section that describes the fees that the IDOC may charge to help defray the cost of services provided to offenders. The fees themselves are not new fees but fees the IDOC has been charging and collecting for a number of years now.

117. Department Visitors – The amendment of this rule is necessary for the purpose of protecting staff and/or IDOC property from harm or theft. The amendment ensures better identification and accountability of IDOC visitors and puts in place restrictions from bringing firearms and other deadly weapons into secured areas of IDOC property.

312. Deceased Offenders – The amendment of this rule is necessary to make the entire section comprehensively reflect operational practices currently being used by the IDOC regarding a deceased offender's money and property.

510. Searches of Persons and Vehicles Entering Department Facilities – This section is being deleted in its entirety due to being combined with section 511.

511. Access to Department Properties – The amendment of this rule is necessary for the purpose of protecting staff and offenders from harm. The amendment ensures better identification and accountability of IDOC visitors and bans visitors from bringing contraband and controlled substances into IDOC correctional facilities, community work centers, and district probation and parole offices. The amendment of this rule is also necessary to make the entire section comprehensively reflect operational practices currently being used by the IDOC correctional facilities, CWCs, and district probation and parole offices.

**FEE SUMMARY:** There is no increase in fees imposed with this rulemaking.

**FISCAL IMPACT:** There is no fiscal impact on general funds for this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because Section 20-212(1) exempts the Idaho State Board of Correction from conducting negotiated rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Lorenzo Washington, Policy Coordinator, at (208) 658-2133.

DATED this 31st day of August, 2012.

Lorenzo Washington  
Policy Coordinator  
Idaho Department of Correction  
1299 N Orchard St., Suite 110  
Boise, ID 83706  
Ph: (208 ) 658-2133  
Fax: (208) 327-7404

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**THE FOLLOWING IS THE PROCLAMATION OF TEXT FOR DOCKET NO. 06-0101-1202**

**013. DEPARTMENT FEE STRUCTURE.**

In order to help the Department defray the cost of various services provided to offenders, the Department may charge the following fees. ( )

**01. Presentence Investigation Fee.** Pursuant to Section 19-2516, Idaho Code, if a court orders a presentence investigation to be conducted, the court shall order the defendant to pay up to one hundred dollars (\$100) as determined by the Department as repayment for the cost of conducting the presentence investigation and preparing the presentence investigation report. ( )

**02. Cost of Supervision Fee.** Pursuant to Section 20-225, Idaho Code, the Department may charge offenders who are on probation or parole supervision a fee up to seventy-five dollars (\$75) per month. Costs of supervision are the direct and indirect costs incurred by the Department to supervise probationers and parolees, including tests to determine drug and alcohol use, books, and written materials to support rehabilitation efforts, and monitoring of physical location through the use of technology. ( )

**03. Interstate Compact Application Fee.** Pursuant to Section 20-225A, Idaho Code, the Department may charge any person under state probation or parole supervision who applies for a transfer of supervision to another state an application fee up to one hundred dollars (\$100). ( )

**04. Maintenance/Room and Board Fee.** Pursuant to Section 20-242, Idaho Code, the Department may require that prisoners pay an amount to the Board sufficient for the prisoner's board and personal expenses, both inside and outside the jail, facility, or residence, including costs of administering such prisoner's work furlough program, laundry service fee, and travel or van service fee. The Department currently sets these fees in Department standard operating procedure. ( )

**05. Hobby Craft Surcharge.** Pursuant to Department standard operating procedure, the Department may charge offenders who participate in facility hobby craft activities a surcharge to offset the cost of hobby craft supplies and items that are used by participating offenders, such as hobby shop tools. The Department currently sets the fee in Department standard operating procedure. ( )

**06. Photo Copying Fee.** Pursuant to Department standard operating procedure, the Department may charge offenders a fee for photocopying court documents relating to qualified legal claims or other documents as authorized by the Department. Offenders will not be denied access to courts based on their inability to pay for photocopies related to qualified legal claims. The Department currently sets the fee in Department standard operating procedure. ( )

**07. Medical Co-Pay Fee.** Pursuant to Section 20-209, Idaho Code, the Board shall provide for the care, maintenance and employment of all prisoners now or hereinafter committed to its custody. In order to offset the



costs associated therewith, the Department may charge offenders a fee for medical services. The IDOC and/or contract medical provider shall not deny an offender access to healthcare services based on the offender's inability to pay. The Department currently sets the fee in Department standard operating procedure. ( )

0134. -- 103. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

117. **CENTRAL OFFICE DEPARTMENT VISITORS.**

~~The Board and Department business should shall~~ be conducted in a safe and secure environment. ~~Identification of visitors in the Department central office building is necessary to ensure staff safety and building security. All visitors and visiting staff having business at the Department central office building shall identify themselves to the receptionist upon entering the building.~~ (11-5-99)( )

01. **Identification.** The identification of all Department visitors is necessary to ensure staff safety and building security. All Department visitors shall identify themselves to Department staff upon entering into Department property. The identification of frequent visitors and visiting employees may be made by visual recognition and/or the request to see a Department-issued identification card or law enforcement/peace officer badge. Other The identification of all other visitors, not inclusive of officials escorted by a member of the Board, director, division chief, deputy division chief, district manager, or facility head, shall be through photo identification and/or law enforcement/peace officer badge. (11-5-99)( )

02. **Visitor Sign-In and Sign-Out.** All Department visitors and visiting staff will shall sign-in the visitor's log, located at the receptionist's desk. All visitors and visiting staff will sign out when departing upon entering into Department property and sign out upon exiting Department property. (11-5-99)( )

03. **Possessing Firearms and Other Deadly or Dangerous Weapons.** Without the approval of the Board, director, or division chief, no person shall be allowed to enter into a correctional facility or community work center (CWC) with a firearm or other deadly or dangerous weapon (see Section 511). With the exception of on-duty law enforcement and Department staff who have been authorized by the Board to possess a firearm while on duty, no other persons shall be allowed to enter into restricted areas of a Department central office or district probation and parole office with a firearm or other deadly or dangerous weapon. For the purpose of this subsection only, the following terms and definitions shall apply: ( )

a. 'Restricted area' shall mean any area Department property in which certain security measures are carried out for the purpose of protecting staff and/or Department property from harm or theft. ( )

b. 'Possess' shall mean to bring a weapon, firearm, or other deadly or dangerous weapon, or to cause such items to be brought into Department property or Department vehicles. ( )

c. 'Firearm' shall mean any weapon, whether loaded or unloaded, from which a shot, projectile, or other object may be discharged by force of combustion, explosive, gas and/or mechanical means, whether such firearm is operable or inoperable. ( )

d. 'Deadly or dangerous weapon' shall mean a weapon, device, instrument, material, or substance that is used for, or is readily capable of, causing death or serious bodily injury. ( )

(BREAK IN CONTINUITY OF SECTIONS)

312. **DECEASED INMATES OFFENDERS.**

01. **Notice to Coroner and Family Notifications.** Upon verification of the death of an inmate incarcerated offender, the facility head (or designee) shall notify the county coroner where of the county in which the facility is located and the inmate's offender's family as listed in the case management file in accordance with

emergency contact information the offender has on file with the facility.

~~(11-5-99)~~( )

**02. Autopsy and Inquest.** The coroner shall determine if an autopsy should be performed in accordance with state law and the interests of the public. The Department shall seek an autopsy in all cases of violent or sudden and unexpected death. The coroner shall hold an inquest as required by Section 31-2802~~1~~, Idaho Code, unless the autopsy was waived.

~~(11-5-99)~~( )

**03. Delivery of the Body to a Funeral Home.** As soon as possible after the death of the inmate incarcerated offender, the facility head (or designee) shall arrange for the body to be delivered to coroner or a funeral home. The deceased inmate's offender's family, if any, shall be told where the body may be claimed and if the family claims the body, the family shall be responsible for all costs of interment.

~~(11-5-99)~~( )

**04. Body Not Claimed.** In cases where the coroner has performed an autopsy and the body has been released but not claimed, or where the body has not been claimed within seventy-two (72) hours after death and a reasonable and good faith effort was made to notify the deceased inmate's offender's family, the facility head (or designee) shall arrange with a funeral home for interment. If there is not sufficient property in the estate of the deceased inmate offender to pay the necessary expenses of interment, the expenses are a legal charge against the county where the facility is located pursuant to Section 31-2802, Idaho Code. The director of the Department may, in his sole discretion, accept financial responsibility for the costs of interment on behalf of the Department. When the Department accepts financial responsibility for the costs of interment, the interment will be by cremation.

~~(11-5-99)~~( )

**05. Disposition of the Deceased Inmate Offender's Money and Property.** ~~The deceased inmate's personal property and assets held by the department shall be applied toward the costs of interment first. Any monies or property claimed by the deceased inmate's legal representative shall not be released without a written agreement signed by the legal representative to pay the costs of interment.~~ After the death of an incarcerated offender, the facility head (or designee) will make a good-faith effort to locate the person or charitable organization the deceased offender designated in emergency contact information to receive his money and property after interment and property mailing decisions have been made.

~~(11-5-99)~~( )

**a.** ~~The remainder of any money or property after deduction of the costs of interment shall be released to the deceased inmate's legal representative. The legal representative shall present written documentation of the representative's powers and authority.~~ In cases where none of the deceased offender's family or friends take financial responsibility for the deceased offender's interment, the Department shall first apply the deceased offender's money towards the offender's interment.

~~(11-5-99)~~( )

**b.** ~~If no person claims the money or property of the deceased inmate within thirty (30) days from the date of death, the facility head where the deceased inmate was housed at the time of death shall deliver all money or property to the local public administrator for probate pursuant to Title 14, Chapter 1, Idaho Code.~~ In cases where the person or charitable organization the deceased offender designated to receive his property and the designated person or charitable organization requests that the deceased offender's property be mailed, the Department shall secondly apply the deceased offender's money towards the cost of mailing the deceased offender's property to the person or charitable organization. If no money remains to cover the cost of mailing the deceased offender's property, the person or charitable organization will have to arrange with the facility to pickup the property, or if the person or charitable organization declines to pickup the property, the Department may dispose of the property in accordance with Department standard operating procedure.

~~(11-5-99)~~( )

**c.** Any money remaining after the deduction of interment and property mailing costs shall be released by the Department to the person or charitable organization the deceased offender designated in emergency contact information to receive his money and property.

( )

**i.** If the Department is unable to locate the person or charitable organization designated to receive the deceased offender's money, the Department will hold the money for up to two (2) fiscal years and then process the money as unclaimed funds. The Department shall submit all unclaimed funds to the Idaho State Treasurer's Office.

( )

**ii.** If the Department is unable to locate the person or charitable organization designated to receive the

~~deceased offender's property, the Department will hold the property for up to one hundred eighty (180) days and then donate or destroy the property in accordance with Department standard operating procedure. ( )~~

**06. Inmates Offenders Housed in Non-Department Facilities.** If an ~~inmate incarcerated offender~~ in the custody of the Board dies while housed in a non-Department facility, the Department shall pay for costs of disposition of the body, unless other arrangements are stated in an agreement or contract with the non-Department facility or unless the family shall claim the body of the deceased ~~inmate offender~~. ~~(11-5-99)( )~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**504. -- ~~509~~10. (RESERVED)**

**~~510. SEARCHES OF PERSONS AND VEHICLES ENTERING DEPARTMENT FACILITIES.~~**

~~In order to maintain the secure and orderly operation of the facilities, the Department shall control access to all Department facilities. All persons enter upon or in to a Department property or facility at their own risk and will be required to comply with security and control measures. (Also see Section 511.) (10-5-07)~~

~~**01. Persons Subject to Search.** All persons and vehicles entering a facility or upon Department property are subject to search. (11-5-99)~~

~~**02. Photo Identification Required.** Adults entering a facility or upon Department property are required to possess and present, on demand, photo identification. The Department will establish identification procedures for minor children in standard operating procedures. (Also see Section 604.) (10-5-07)~~

~~**03. Contraband Prohibited.** Any person who brings or attempts to bring any item or article of contraband into a facility or onto Department property will be subject to arrest and prosecution pursuant to Section 18-2510, Idaho Code. (10-5-07)~~

~~**a.** Members of the public bringing contraband on to or in a facility or Department property during a visit, tour or other sanctioned activity will be subject to immediate and permanent cancellation of the visit, tour or other sanctioned activity. (10-5-07)~~

~~**b.** Vendors, contractors, interns, volunteers or employees bringing contraband on to or in a facility, Department property or inmate work site will be subject to immediate termination of services as a vendor, contractor, intern, volunteer or employee. (10-5-07)~~

**511. ACCESS TO DEPARTMENT FACILITIES PROPERTIES.**

~~In order to maintain the secure and orderly operation of Department correctional facilities, community work centers (CWCs), and district probation and parole offices, the Department shall control access to these Department properties. Any person entering onto and/or into a correctional facility, CWC, or district probation and parole office property, shall do so at his own risk and will be required to comply with all written and/or verbal security and control measures. The Department shall not allow public access to any ~~Department property or~~ correctional facility, CWC, or district probation and parole office property without approval of the Board, director, division chief, deputy division chief, district manager, or facility head, or designees. The Department may consider any person who enters onto ~~Department property and/or~~ into a correctional facility, CWC, or district probation and parole office property without a business purpose or approval to be trespassing and subject to arrest and prosecution pursuant to Idaho Code. (Also see Section 510.) (10-5-07)( )~~

**01. Access and Egress Control.** The Department will establish standard operating procedure to control access to and egress from all Department properties and facilities. (10-5-07)

**02. Persons Subject to Search.** All persons entering onto ~~Department property and/or~~ into facilities are a correctional facility, CWC, or district probation and parole office property, may be subject to search (see Section 510). (10-5-07)( )

**03. Vehicles Subject to Search.** All vehicles entering onto a correctional facility, CWC, or district probation and parole office property may be subject to search. All vehicles entering the secure perimeter of a correctional facility shall be searched upon entering and exiting the facility. While within the secure perimeter of a correctional facility, unattended vehicles must be locked and have keys removed. ( )

**04. Photo Identification Required.** All photo identification requirements described in Section 117 shall apply to all persons entering into a Department correctional facility, CWC, or district probation and parole office property. The Department shall establish identification procedures for minor children visiting with offenders in standard operating procedures. (Also see Section 604.) ( )

**05. Contraband Prohibited.** The items allowed onto and/or into a correctional facility, CWC, or district probation and parole office property shall be controlled. Unauthorized items are called contraband. Members of the public bringing contraband onto and/or into a correctional facility, CWC, or district probation and parole office property during a visit, tour, or other sanctioned activity shall be subject to immediate and permanent cancellation of the visit, tour, or other sanctioned activity. ( )

**a.** Any person who brings or attempts to bring contraband onto and/or into a correctional facility or CWC property shall be subject to arrest and prosecution pursuant to Section 18-2510, Idaho Code. ( )

**b.** Any person who brings or attempts to bring controlled substances onto and/or into a district probation and parole office property shall be subject to arrest and prosecution pursuant to Section 37-2732, Idaho Code. ( )

**c.** Any person who brings a firearm into restricted areas of a district probation and parole office property shall be subject to Section 117 of these rules. ( )

**06. Termination of Visit, Tour, Sanctioned Activities, and Services.** Any member of the public bringing contraband onto and/or into a correctional facility, CWC, or district probation and parole office property during a visit, tour, or other sanctioned activity will be subject to immediate and permanent cancellation of the visit, tour, or other sanctioned activity. Vendors, contractors, interns, volunteers, or employees bringing contraband onto and/or into a correctional facility, CWC, or district probation and parole office property or offender work site may be subject to immediate termination of services as a vendor, contractor, intern, volunteer, or employee. ( )

**IDAPA 07 - DIVISION OF BUILDING SAFETY**  
**07.02.03 - RULES GOVERNING PERMIT FEE SCHEDULE**  
**DOCKET NO. 07-0203-1201**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 54-2605, 54-2606 and 54-2626, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

Current rule requires the DBS to assess a re-inspection fee for any trips to a job site necessary to remove a “red tag” from a plumbing installation. However, some trips to re-inspect an initially unacceptable plumbing installation should be included in the price of the original permit. A re-inspection fee should only be assessed by the DBS for the other instances enumerated in this subsection of the rule, which already includes the ability to impose a re-inspection fee for repeat trips necessary as a result of the submitter improperly responding to a correction notice. The amendments to this rule would eliminate the mandatory requirement that the Division impose a re-inspection fee for each trip to remove a correction notice (“red tag”) from a plumbing installation.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 minimal negative fiscal impact on the Division of Building Safety, and a minimal positive affect on contractors and home owners as the Division will no longer be automatically required to charge a re-inspection fee to remove a “red tag” from a jobsite.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rulemaking reflects an administrative change whereby the Division will eliminate any mandatory requirement to charge a re-inspection fee solely to remove a notice of unacceptable plumbing (“red tag”). The rulemaking was addressed by the Board at four separate meetings over the past year, several conducted prior to the passage of 2012 SB 1366 related to negotiated rulemaking. This proposal did not receive any opposition at any such meetings.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 24th day of August, 2012.

Steve Keys  
Deputy Administrator - Operations  
Division of Building Safety  
1090 E. Watertower St.  
P. O. Box 83720  
Meridian, ID 83642  
Phone: (208) 332-8986  
Fax: (208) 1-877-810-2840

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0203-1201**

**011. FEE SCHEDULE.**

**01. New Residential - Single Family Dwelling.** Includes all buildings with plumbing systems being constructed on each property.

<b>New Residential - Single-Family Dwelling</b>	
Up to 1,500 Square feet of living space	- \$130
1,501 to 2,500 Square feet of living space	- \$195
2,501 to 3,500 Square feet of living space	- \$260
3,501 to 4,500 Square feet of living space	- \$325
Over 4,500 Square feet of living space	- \$325 plus \$65 for each additional 1,000 square feet or portion thereof

(4-9-09)

**02. New Residential - Multi-Family Dwellings.**

<b>New Residential - Multi-Family Dwellings</b>	
Duplex Apartment	- \$260
Three (3) or more Multi-family Units	- \$130 per Building plus \$65 per Unit

(3-26-08)

**03. Existing Residential.** Sixty-five dollars (\$65) plus ten dollars (\$10) for each additional plumbing fixture being installed up to a maximum of the corresponding square footage of the residential building. (3-26-08)

**04. Other Installations Including Industrial and Commercial.** The inspection fees listed in this Section shall apply to any and all plumbing installations not specifically mentioned elsewhere in this schedule. The plumbing cost shall be the cost to the owner of all labor charges and all other costs that are incurred in order to complete the installation of any and all plumbing equipment and materials installed as part of the plumbing system. (3-26-08)

**a.** Plumbing system cost not exceeding ten thousand dollars (\$10,000): sixty dollars (\$60) plus two

percent (2%) of the total plumbing system cost. (3-26-08)

**b.** Plumbing system cost over ten thousand dollars (\$10,000), but not exceeding one hundred thousand dollars (\$100,000): two hundred sixty dollars (\$260) plus one percent (1%) of the plumbing system cost exceeding ten thousand dollars (\$10,000). (3-26-08)

**c.** Plumbing system cost over one hundred thousand dollars (\$100,000): one thousand one hundred sixty dollars (\$1,160) plus one half of one percent (.5%) of the plumbing system cost exceeding one hundred thousand dollars (\$100,000). (3-26-08)

**d.** All fees calculated under this schedule must be calculated on the total plumbing cost of the job and this figure must be shown on the permit. (3-26-08)

**05. Requested Inspections.** A fee of sixty-five dollars (\$65) per hour or portion of an hour shall apply, with the requesting party responsible for all costs incurred in out-of-state travel. (3-26-08)

**06. Additional Fees and Re-Inspection Fees.** A fee of sixty-five dollars (\$65) per hour or portion of an hour shall apply to: (3-26-08)

**a.** Trips to inspect when: (3-26-08)

i. The submitter of the permit has given notice to the Division of Building Safety that the work is ready for inspection and it is not; or (3-26-08)

ii. If the submitter has not accurately identified the work location; or (3-26-08)

iii. If the inspector cannot gain access to make the inspection. (3-26-08)

**b.** Trips to inspect corrections required by the inspector as a result of the submitter improperly responding to a corrective notice. (3-26-08)

~~e.~~ *Each trip necessary to remove a red tag from the jobsite.* (~~3-26-08~~)

~~d.c.~~ When corrections have not been made in the prescribed time, unless an extension has been requested and granted. (3-26-08)

~~ed.~~ No permit - failure to post or send permit and required fee in the prescribed time will, at the discretion of the Division, result in the assessment of a double fee. (3-26-08)

**07. Plan Checking Fee.** Sixty-five dollars (\$65) per hour or portion thereof. (3-26-08)

**08. Mobile Homes.** Each connection or re-connection to existing sewer and water stubs shall be sixty-five dollars (\$65). (3-26-08)

**09. Mobile Home Parks and/or RV Parks.** Sewer and water service lines in mobile home parks and RV parks shall be classed as commercial. NOTE: This does not include or permit the connection of the mobile home. See Subsection 011.04, of these rules. (7-11-89)

**10. Residential.** Lawn sprinklers shall be sixty-five dollars (\$65). (3-26-08)

**11. Water Conditioners.** Water conditioners shall be sixty-five dollars (\$65). (3-26-08)

**12. Sewer and Water Permit Fees.** Residential sewer and water service line fees shall apply to all new construction, installations, and replacements. (3-30-06)

**a.** Sewer and water permit fees for excavators or property owners shall be assessed at the same rate as residential or nonresidential based on the classification of the construction project. (3-30-06)

**b.** Residential sewer and water service lines installation permit fees will be assessed at the rate of thirty-eight dollars (\$38) each or sixty-five dollars (\$65) for a combination of both if only one (1) inspection is required and the work is done by the same individual. (3-26-08)

**13. Non-Residential.** Lawn sprinkler permit fees shall be calculated at the same rate as industrial and commercial plumbing installations. (3-26-08)

**14. Nonresidential Sewer and Water Service Lines Permit Fees.** If installed by someone other than the plumbing contractor of the building, fees shall be calculated at the same rate as industrial and commercial plumbing installations. (3-26-08)

**15. Technical Service Fee.** Sixty-five dollars (\$65) per hour for each hour or portion thereof. (3-26-08)

**16. Multipurpose Residential Fire Sprinkler and Domestic Water Supply System Fee.** The inspection fee for the installation of the fire sprinkler portion of a multipurpose residential fire sprinkler and domestic water supply system in a one (1)-family or two (2)-family residence shall be a minimum of sixty-five dollars (\$65) or four dollars (\$4) per fire sprinkler head, whichever is greater. (3-26-08)

**17. Gray Water Systems.** Gray water systems in residential occupancies shall be permitted at one hundred thirty dollars (\$130). (4-9-09)

**18. Reclaimed Water Systems.** Reclaimed water systems shall be calculated at the same rate as industrial and commercial installations in the same manner provided for in Subsection 011.04 of these rules. (4-9-09)



**IDAPA 07 - DIVISION OF BUILDING SAFETY**  
**07.02.04 - RULES GOVERNING PLUMBING SAFETY INSPECTIONS**

**DOCKET NO. 07-0204-1201**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 54-2605 and 54-2625, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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:

DBS is required to notify the permit holder when a plumbing installation fails to comply with the applicable standards by attaching an appropriate inspection tag on each plumbing installation that is unacceptable. However, the Division no longer utilizes differently colored inspection tags and identifies unacceptable plumbing installations by issuing and attaching a "Notice of Correction." Additionally, this amendment reflects that a re-inspection fee may not necessarily be appropriate when a Correction Notice is issued. The rulemaking would eliminate the reference to a red inspection tag, and clarify that unacceptable plumbing installations will result in the issuance of a "Notice of Correction." It also clarifies that re-inspection fees will only be assessed in accordance with IDAPA 07.02.03, "Rules Governing Permit Fee Schedule" which specifically address such re-inspection fees.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

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

The fiscal impact to the Division will be positive because of the reduction in the number of differently colored tags purchased and the ability to use the same tags across multiple trades. There will be a small negative fiscal impact on the Division of Building Safety as it will not be able or required to charge a re-inspection fee merely to remove a red tag (correction notice). However, that is mitigated by the fact that DBS frequently does not charge it anyway. It will have a positive fiscal impact on contractors and home owners performing their own installations as they will no longer be required to pay a re-inspection fee merely for the DBS to remove a red tag. Such re-inspection fees are specifically addressed in another chapter of IDAPA rules.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rulemaking reflects an administrative change whereby the Division will eliminate any reference to an inspection tag color and simply identify unacceptable plumbing by issuing a "Notice of Correction." The rulemaking was addressed by the Board at four separate meetings over the past year, several conducted prior to the passage of 2012 SB 1366 related to negotiated rulemaking. This proposal did not receive any opposition at any such meetings.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 24th day of August, 2012.

Steve Keys  
Deputy Administrator - Operations  
Division of Building Safety  
1090 E. Watertower St.  
P. O. Box 83720  
Meridian, ID 83642  
Phone: (208) 332-8986  
Fax: (208) 1-877-810-2840

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0204-1201**

**011. REQUIRED INSPECTIONS.**

**01. Ground Work Inspection Tags.** For ground work to be covered, with acceptance by the inspector. A tag will be attached in a prominent location, preferably to a vertical riser. (5-8-09)

**02. Rough-In Inspection Tags.** For rough-in, prior to covering or concealing with acceptance by the inspector. A tag will be placed in a prominent location. (5-8-09)

**03. Final Inspection Tags.** For final, attached when the plumbing as specified on the permit is complete and conforms to the requirements of the code. (5-8-09)

**04. Inspection Tags for Unacceptable Plumbing.** ~~Red: Not acceptable, and~~ **Correction Notice** - when attached to the plumbing system means that the plumbing is not acceptable and that corrections will be required. Also, a reinspection and reinspection fee for such installations shall be required in accordance with IDAPA 07.02.03, "Rules Governing Permit Fee Schedule," Subsection 011.06. ~~(6-4-76)()~~

**IDAPA 07 - DIVISION OF BUILDING SAFETY**  
**07.02.06 - RULES CONCERNING UNIFORM PLUMBING CODE**

**DOCKET NO. 07-0206-1201**

**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 54-2601 and 54-2605, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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:

Previously, the Idaho Plumbing Board, in collaboration with plumbing industry stakeholders, adopted the Idaho State Plumbing Code (ISPC) in lieu of the Uniform Plumbing Code (UPC) as the legal standard by which all plumbing installations performed in the state must be installed. The current rules provide specific amendments to various provisions of the 2003 UPC that the Plumbing Board has adopted over the years. The amendments in this rulemaking update several of those code amendments. Furthermore, the ISPC is modeled after the 2009 UPC and additional amendment to it is desired by the Board and stakeholders. The Board is statutorily required to make amendments to the ISPC utilizing the negotiated rulemaking process. Since the ISPC is modeled after the UPC, many of the existing amendments in the rule will remain in effect; however, additional amendments by the Board are desired and included, as well as amendments generated through the negotiated rulemaking process.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

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

The proposed amendments will have a positive impact on both plumbing and general contractors due to the fact that, in most cases, the changes allow for fewer fixtures on commercial jobs, resulting in a cost reduction to the contractors and owners. The negative impact is minimal and would only apply to certain conditions in which the plumbing contractor would need to install one extra fitting. The proposed changes have no fiscal impact on the Division of Building Safety dedicated fund or the state of Idaho general fund.

**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 May 2, 2012 Idaho Administrative Bulletin, [Vol. 12-5, page 51](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The Idaho State Plumbing Code, Appendices and Amendments are being incorporated by reference into this rule because, previously, the Idaho Plumbing Board, in collaboration with plumbing industry stakeholders, adopted the Idaho State Plumbing Code (ISPC) in lieu of the Uniform Plumbing Code (UPC) as the legal standard by which all plumbing installations performed in the state must be installed.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 28th day of August, 2012.

Steve Keys  
Deputy Administrator - Operations  
Division of Building Safety  
1090 E. Watertower St.  
P. O. Box 83720  
Meridian, ID 83642  
Phone: (208) 332-8986  
Fax: (208) 1-877-810-2840

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0206-1201**

**IDAPA 07  
TITLE 02  
CHAPTER 06**

**07.02.06 - RULES CONCERNING ~~UNIFORM~~ IDAHO STATE PLUMBING CODE**

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited as IDAPA 07.02.06, "Rules Concerning ~~Uniform~~ Idaho State Plumbing Code," Division of Building Safety. ( )

**02. Scope.** These rules prescribe the use of the Idaho State Uniform Plumbing Code. (~~2-26-93~~)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**011. ADOPTION AND INCORPORATION BY REFERENCE OF THE ~~2003-UNIFORM~~ IDAHO STATE PLUMBING CODE.**

The ~~2003-Uniform~~ Idaho State Plumbing Code published in 2012, including Appendices "A, B, D, E, ~~G, H, I, J,~~ and L," (herein ~~U.P.C.~~ ISPC) is adopted and incorporated by reference with ~~the following~~ amendments as prescribed by the Idaho Plumbing Board and contained in this Section. The Idaho State Plumbing Code is modeled after the 2009 Uniform Plumbing Code (UPC). The ~~2003-Uniform~~ Idaho State Plumbing Code is available at the Division of Building Safety; offices located at 1090 E. Watertower St., Suite 150, Meridian, Idaho 83642; ~~and at the Division of Building Safety, 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814; and 2055 Garrett Way, Building 1, Suite 4, Pocatello, Idaho 83201. It may also be accessed electronically online at http://dbs.idaho.gov/.~~ (~~4-6-05~~)( )

**01. Section 218.** Delete definition of "Plumbing System." Incorporate definition of "Plumbing System" as set forth in Section 54-2604, Idaho Code. (3-15-02)

**02. Section 315.4.** Add: Where unsuitable or soft material is encountered, excavate to a depth not less than two (2) pipe diameters below the pipe and replace with select backfill. Such backfill shall be sand, fine gravel, or stone and shall provide lateral support for the pipe. Where rock is encountered, the trench shall be excavated to a minimum depth of six (6) inches (152 mm) below the bottom of the pipe. Sand shall be added to provide uniform bedding and support for the pipe. The pipe shall not rest on any rock at any point, including joints. ( )

**023.** **Section 316.1.6 Solvent Cement Plastic Pipe Joints.** PVC DWV may be joined by the use of one-step solvent cement listed or labeled per U.P.C. Section 301.1.1. (4-6-05)( )

~~**03.** **Section 402.3.1. Nonwater Urinals.** Where nonwater urinals are installed they shall be listed and comply with the applicable standards referenced in Table 14-1. Nonwater urinals shall have a barrier liquid sealant to maintain a trap seal. Nonwater urinals shall permit the unimpeded flow of waste through the urinal to the sanitary drainage system. Nonwater urinals shall be cleaned and maintained in accordance with the manufacturer's instructions. Where nonwater urinals are installed they shall have a water distribution line rough-in to the urinal location to allow for the installation of an approved backflow prevention device in the event of a retrofit. (5-8-09)~~

**04.** **Section 402.4 Metered Faucets.** Self-closing or self-closing metering faucets may be installed on lavatories intended to serve the transient public, such as those in, but not limited to, service stations, train stations, airports, restaurants, convention halls, and rest stops. Installed metered faucets shall deliver a maximum of zero point two six (0.26) gallons (one point zero (1.0) liter) of water per use. ( )

**05.** **Section 412.0 Minimum Number of Required Fixtures.** Delete Section 412.0 and all subsections contained thereunder and replace with the following: ( )

**a.** **412.1 Fixture Count.** Plumbing fixtures shall be provided for the type of building occupancy and in the minimum number shown in Table 412.1. The total occupant load and occupancy classification shall be determined in accordance with the building code. Occupancy classification not shown in Table 412.1 shall be considered separately by the Authority Having Jurisdiction. The minimum number of fixtures shall be calculated at fifty percent (50%) male and fifty percent (50%) female based on the total occupant load. Where information submitted indicates a difference in distribution of the sexes such information shall be used in order to determine the number of fixtures for each sex. Once the occupancy load and occupancy are determined, Table 412.1 shall be applied to determine the minimum number of plumbing fixtures required. Where applying the fixture ratios in Table 412.1 results in fractional numbers, such numbers shall be rounded to the next whole number. For multiple occupancies, fractional numbers shall be first summed and then rounded to the next whole number. ( )

**b.** **412.1.1 Family or Assisted-Use Toilet and Bathing Facilities.** Where family or assisted-use toilet and bathing rooms are required, in applicable building regulations, the facilities shall be installed in accordance with those regulations. ( )

**c.** **412.2 Separate Facilities.** Separate toilet facilities shall be provided for each sex, with the following exceptions: ( )

**i.** Residential installations. ( )

**ii.** In occupancies with a total occupant load of ten (10) or less, including customers and employees, one (1) toilet facility, designed for use by no more than one (1) person at a time, shall be permitted for use by both sexes. ( )

**iii.** In business and mercantile occupancies with a total occupant load of fifty (50) or less including customers and employees, one (1) toilet facility, designed for use by no more than one (1) person at a time, shall be permitted for use by both sexes. ( )

**d.** **412.3 Fixture Requirements for Special Occupancies.** Additional fixtures shall be permitted to be required where unusual environmental conditions or referenced activities are encountered. In food preparation areas, fixture requirements shall be permitted to be dictated by health codes. ( )

**e.** **412.4 Toilet Facilities Serving Employees and Customers.** Each building or structure shall be provided with toilet facilities for employees and customers. Requirements for customers and employees shall be permitted to be met with a single set of restrooms accessible to both groups. Required toilet facilities for employees and customers located in shopping malls or centers shall be permitted to be met by providing a centrally located toilet facility accessible to several stores. The maximum travel distance from entry to any store to the toilet facility shall not exceed three hundred (300) feet (91.4 m). Required toilet facilities for employees and customers in other than

shopping malls or centers shall have a maximum travel distance not to exceed five hundred (500) feet (152.4 m). ( )

**f.** 412.4.1 Access to Toilet Facilities. In multi-story buildings, accessibility to the required toilet facilities shall not exceed one (1) vertical story. Access to the required toilet facilities for customers shall not pass through areas designated as for employee use only such as kitchens, food preparation areas, storage rooms, closets, or similar spaces. Toilet facilities accessible only to private offices shall not be counted to determine compliance with this section. ( )

**g.** 412.5 Toilet Facilities for Workers. Toilet facilities shall be provided and maintained in a sanitary condition for the use of workers during construction. ( )

**06.** Table 4-1 Minimum Plumbing Facilities. Delete Table 4-1 and replace with the following Table 412.1:

**TABLE 412.1**  
**MINIMUM PLUMBING FACILITIES<sup>1</sup>**

Each building shall be provided with sanitary facilities, including provisions for persons with disabilities as prescribed by the Department Having Jurisdiction. Table 412.1 applies to new buildings, additions to a building, and changes of occupancy or type in an existing building resulting in increased occupant load.

TYPE OF OCCUPANCY <sup>2</sup>	WATER CLOSETS (FIXTURES PER PERSON) <sup>3</sup>		URINALS (FIXTURES PER PERSON)	LAVATORIES (FIXTURES PER PERSON)		BATHTUBS OR SHOWERS (FIXTURES PER PERSON)	DRINKING FOUNTAINS/ FACILITIES (FIXTURES PER PERSON)	OTHER
	Male	Female	Male	Male	Female			
<u>A-1 Assembly occupancy (fixed or permanent seating)- theatres, concert halls and auditoriums</u>	1: 1-100 2: 101-200 3: 201-400	1: 1-25 2: 26-50 3: 51-100 4: 101-200 6: 201-300 8: 301-400	1: 1-200 2: 201-300 3: 301-400 4: 401-600	1: 1-200 2: 201-400 3: 401-600 4: 601-750	1: 1-100 2: 101-200 4: 201-300 5: 301-500 6: 501-750		1: 1-250 2: 251-500 3: 501-750	1 service sink or laundry tray
	Over 400, add 1 fixture for each additional 500 males and 1 fixture for each additional 125 females.		Over 600, add 1 fixture for each additional 300 males.	Over 750, add 1 fixture for each additional 250 males and 1 fixture for each additional 200 females.		Over 750, add 1 fixture for each additional 500 persons.		
<u>A-2 Assembly occupancy- restaurants, pubs, lounges, night clubs and banquet halls</u>	1: 1-50 2: 51-150 3: 151-300 4: 301-400	1: 1-25 2: 26-50 3: 51-100 4: 101-200 6: 201-300 8: 301-400	1: 1-200 2: 201-300 3: 301-400 4: 401-600	1: 1-150 2: 151-200 3: 201-400	1: 1-150 2: 151-200 4: 201-400		1: 1-250 2: 251-500 3: 501-750	1 service sink or laundry tray
	Over 400, add 1 fixture for each additional 250 males and 1 fixture for each 125 females.		Over 600, add 1 fixture for each additional 300 males.	Over 400 add 1 fixture for each additional 250 males and 1 fixture for each additional 200 females.		Over 750, add 1 fixture for each additional 500 persons.		

<u>TYPE OF OCCUPANCY</u> <sup>2</sup>	<u>WATER CLOSETS (FIXTURES PER PERSON)</u> <sup>3</sup>		<u>URINALS (FIXTURES PER PERSON)</u>	<u>LAVATORIES (FIXTURES PER PERSON)</u>		<u>BATHTUBS OR SHOWERS (FIXTURES PER PERSON)</u>	<u>DRINKING FOUNTAINS/ FACILITIES (FIXTURES PER PERSON)</u>	<u>OTHER</u>
	Male	Female	Male	Male	Female			
<u>A-3 Assembly occupancy (typical without fixed or permanent seating)- arcades, places of worship, museums, libraries, lecture halls, gymnasiums (without spectator seating), indoor pools (without spectator seating)</u>	Male 1: 1-100 2: 101-200 3: 201-400	Female 1: 1-25 2: 26-50 3: 51-100 4: 101-200 6: 201-300 8: 301-400	Male 1: 1-100 2: 101-200 3: 201-400 4: 401-600	Male 1: 1-200 2: 201-400 3: 401-600 4: 601-750	Female 1: 1-100 2: 101-200 4: 201-300 5: 301-500 6: 501-750		1: 1-250 2: 251-500 3: 501-750	1 service sink or laundry tray
	Over 400 add 1 fixture for each additional 500 males and 1 fixture for each additional 125 females.		Over 600, add 1 fixture for each additional 300 males.	Over 750, add 1 fixture for each additional 250 males and 1 fixture for each additional 200 females.		Over 750, add 1 fixture for each additional 500 persons.		
<u>A-4 Assembly occupancy (indoor activities or sporting events with spectator seating)- swimming pools, skating rinks, arenas and gymnasiums</u>	Male 1: 1-100 2: 101-200 3: 201-400	Female 1: 1-25 2: 26-50 3: 51-100 4: 101-200 6: 201-300 8: 301-400	Male 1: 1-100 2: 101-200 3: 201-400 4: 401-600	Male 1: 1-200 2: 201-400 3: 401-750	Female 1: 1-100 2: 101-200 4: 201-300 5: 301-500 6: 501-750		1: 1-250 2: 251-500 3: 501-750	1 service sink or laundry tray
	Over 400, add 1 fixture for each additional 500 males and 1 fixture for each additional 125 females.		Over 600, add 1 fixture for each additional 300 males.	Over 750, add 1 fixture for each additional 250 males and 1 fixture for each additional 200 females.		Over 750, add 1 fixture for each additional 500 persons.		
<u>A-5 Assembly occupancy (outdoor activities or sporting events)- amusement parks, grandstands and stadiums</u>	Male 1: 1-100 2: 101-200 3: 201-400	Female 1: 1-25 2: 26-50 3: 51-100 4: 101-200 6: 201-300 8: 301-400	Male 1: 1-100 2: 101-200 3: 201-400 4: 401-600	Male 1: 1-200 2: 201-400 3: 401-750	Female 1: 1-100 2: 101-200 4: 201-300 5: 301-500 6: 501-750		1: 1-250 2: 251-500 3: 501-750	1 service sink or laundry tray
	Over 400, add 1 fixture for each additional 500 males and 1 fixture for each additional 125 females.		Over 600, add 1 fixture for each additional 300 males.	Over 750, add 1 fixture for each additional 250 males and 1 fixture for each additional 200 females.		Over 750, add 1 fixture for each additional 500 persons.		

<u>TYPE OF OCCUPANCY</u> <sup>2</sup>	<u>WATER CLOSETS (FIXTURES PER PERSON)</u> <sup>3</sup>		<u>URINALS (FIXTURES PER PERSON)</u>	<u>LAVATORIES (FIXTURES PER PERSON)</u>		<u>BATHTUBS OR SHOWERS (FIXTURES PER PERSON)</u>	<u>DRINKING FOUNTAINS/FACILITIES (FIXTURES PER PERSON)</u>	<u>OTHER</u>	
	Male	Female		Male	Female				
<u>B Business occupancy (office, professional or service type transactions)- banks, vet clinics, hospitals, car wash, banks, beauty salons, ambulatory health care facilities, laundries and dry cleaning, educational institutions (above high school), or training facilities not located within school, post offices and printing shops</u>	Male 1: 1-50 2: 51-100 3: 101-200 4: 201-400	Female 1: 1-15 2: 16-30 3: 31-50 4: 51-100 8: 101-200 11: 201-400	Male 1: 1-100 2: 101-200 3: 201-400 4: 401-600	Male 1: 1-75 2: 76-150 3: 151-200 4: 201-300 5: 301-400	Female 1: 1-50 2: 51-100 3: 101-150 4: 151-200 5: 201-300 6: 301-400		1 per 150	1 service sink or laundry tray	
	Over 400, add 1 fixture for each additional 500 males and 1 fixture for each additional 150 females.		Over 600, add 1 fixture for each additional 300 males.	Over 400, add 1 fixture for each additional 250 males and 1 fixture for each additional 200 females.					
<u>E Educational occupancy- private or public schools</u>	Male 1 per 50	Female 1 per 30	Male 1 per 100	Male 1 per 40	Female 1 per 40		1 per 150	1 service sink or laundry tray	
<u>F1, F2 Factory or Industrial occupancy-fabricating or assembly work</u>	Male 1: 1-50 2: 51-75 3: 76-100	Female 1: 1-50 2: 51-75 3: 76-100		Male 1: 1-50 2: 51-75 3: 76-100	Female 1: 1-50 2: 51-75 3: 76-100	1 shower for each 15 persons exposed to excessive heat or to skin contamination with poisonous, infectious or irritating material.	1: 1-250 2: 251-500 3: 501-750	Over 750 add 1 fixture for each additional 500 persons.	1 service sink or laundry tray
	Over 100 add 1 fixture for each additional 40 persons.			Over 100 add 1 fixture for each additional 40 persons.					
<u>I-1 Institutional occupancy (houses more than 16 persons on a 24-hour basis)- substance abuse centers, assisted living, group homes, or residential facilities</u>	Male 1 per 15	Female 1 per 15		Male 1 per 15	Female 1 per 15	1 per 8	1 per 150	1 service sink or laundry tray	



<u>TYPE OF OCCUPANCY</u> <sup>2</sup>		<u>WATER CLOSETS (FIXTURES PER PERSON)</u> <sup>3</sup>		<u>URINALS (FIXTURES PER PERSON)</u>	<u>LAVATORIES (FIXTURES PER PERSON)</u>		<u>BATHTUBS OR SHOWERS (FIXTURES PER PERSON)</u>	<u>DRINKING FOUNTAINS/ FACILITIES (FIXTURES PER PERSON)</u>	<u>OTHER</u>
<u>I-2 Institutional occupancy- medical, psychiatric, surgical or nursing homes</u>	<u>Hospitals and nursing homes- individual rooms and ward room</u>	1 per room			1 per room		1 per room	1 per 150	1 service sink or laundry tray
		1 per 8 patients			1 per 10 patients		1 per 20 patients		
	<u>Hospital Waiting or Visitor Rooms</u>	1 per room			1 per room			1 per room	
	<u>Employee Use</u>	Male 1: 1-15 2: 16-35 3: 36-55	Female 1: 1-15 3: 16-35 4: 36-55		Male 1 per 40	Female 1 per 40			
	Over 55, add 1 fixture for each additional 40 persons.								
<u>I-3 Institutional occupancy (houses more than 5 people)</u>	<u>Prisons</u>	1 per cell			1 per cell		1 per 20	1 per cell block/floor	
	<u>Correctional facilities or juvenile center</u>	1 per 8			1 per 10		1 per 8	1 per floor	1 service sink or laundry tray
	<u>Employee Use</u>	Male 1: 1-15 2: 16-35 3: 36-55	Female 1: 1-15 3: 16-35 4: 36-55		Male 1 per 40	Female 1 per 40		1 per 150	
		Over 55, add 1 fixture for each additional 40 persons.							
<u>I-4 Institutional occupancy (any age that receives care for less than 24 hours)</u>	Male 1: 1-15 2: 16-35 3: 36-55	Female 1: 1-15 3: 16-35 4: 36-55		Male 1 per 40	Female 1 per 40			1 per 150	1 service sink or laundry tray
	Over 55, add 1 fixture for each additional 40 persons.								

<u>TYPE OF OCCUPANCY<sup>2</sup></u>	<u>WATER CLOSETS (FIXTURES PER PERSON)<sup>3</sup></u>		<u>URINALS (FIXTURES PER PERSON)</u>	<u>LAVATORIES (FIXTURES PER PERSON)</u>		<u>BATHTUBS OR SHOWERS (FIXTURES PER PERSON)</u>	<u>DRINKING FOUNTAINS/FACILITIES (FIXTURES PER PERSON)</u>	<u>OTHER</u>
	<u>Male</u>	<u>Female</u>	<u>Male</u>	<u>Male</u>	<u>Female</u>			
<u>M Mercantile occupancy (the sale of merchandise and accessible to the public)</u>	<u>1: 1-100</u> <u>2: 101-200</u> <u>3: 201-400</u>	<u>1: 1-100</u> <u>2: 101-200</u> <u>4: 201-300</u> <u>6: 301-400</u>	<u>0: 1-200</u> <u>1: 201-400</u>	<u>1: 1-200</u> <u>2: 201-400</u>	<u>1: 1-200</u> <u>2: 201-300</u> <u>3: 301-400</u>		<u>1: 1-250</u> <u>2: 251-500</u> <u>3: 501-750</u>	<u>1 service sink or laundry tray</u>
	<u>Over 400 add 1 fixture for each additional 500 males and 1 fixture for each 200 females.</u>		<u>Over 400 add 1 fixture for each additional 500 males.</u>	<u>Over 400 add 1 fixture for each additional 500 males and 1 fixture for each 400 females.</u>			<u>Over 750 add 1 fixture for each additional 500 persons.</u>	
<u>R-1 Residential occupancy (minimal stay)- hotels, motels, bed and breakfast homes</u>	<u>1 per sleeping room</u>			<u>1 per sleeping room</u>		<u>1 per sleeping room</u>		<u>1 service sink or laundry tray</u>

<u>TYPE OF OCCUPANCY</u> <sup>2</sup>		<u>WATER CLOSETS (FIXTURES PER PERSON)</u> <sup>3</sup>		<u>URINALS (FIXTURES PER PERSON)</u>	<u>LAVATORIES (FIXTURES PER PERSON)</u>		<u>BATHTUBS OR SHOWERS (FIXTURES PER PERSON)</u>	<u>DRINKING FOUNTAINS/FACILITIES (FIXTURES PER PERSON)</u>	<u>OTHER</u>
		<u>Male</u>	<u>Female</u>		<u>Male</u>	<u>Female</u>			
<u>R-2 Residential occupancy (long-term or permanent)</u>	<u>Dormitories</u>	<u>Male 1 per 10</u>	<u>Female 1 per 8</u>	<u>1 per 25</u>	<u>Male 1 per 12</u>	<u>Female 1 per 12</u>	<u>1 per 8</u>	<u>1 per 150</u>	<u>1 service sink or laundry tray</u>
		<u>Add 1 fixture for each additional 25 males and 1 fixture for each additional 20 females.</u>		<u>Over 150, add 1 fixture for each additional 50 males.</u>	<u>Add 1 fixture for each additional 20 males and 1 fixture for each additional 15 females.</u>				
	<u>Employee Use</u>	<u>Male 1: 1-15 2: 16-35 3: 36-55</u>	<u>Female 1: 1-15 3: 16-35 4: 36-55</u>		<u>Male 1 per 40</u>	<u>Female 1 per 40</u>			
		<u>Over 55, add 1 fixture for each additional 40 persons</u>							
	<u>Apartment house/unit</u>	<u>1 per apartment</u>			<u>1 per apartment</u>		<u>1 per apartment</u>		<u>1 kitchen sink per apartment, 1 laundry tray or 1 automatic clothes washer connection per unit or 1 laundry tray or 1 automatic clothes washer connection for each 12 units</u>
<u>R-3 Residential occupancy (long-term or permanent in nature) for more than 5 but does not exceed 16 occupants)</u>		<u>Male 1 per 10</u>	<u>Female 1 per 8</u>		<u>Male 1 per 12</u>	<u>Female 1 per 12</u>	<u>1 per 8</u>	<u>1 per 150</u>	<u>1 service sink or laundry tray</u>
		<u>Add 1 fixture for each additional 25 males and 1 fixture for each additional 20 females.</u>			<u>Add 1 fixture for each additional 20 males and 1 fixture for each additional 15 females.</u>				

TYPE OF OCCUPANCY <sup>2</sup>	WATER CLOSETS (FIXTURES PER PERSON) <sup>3</sup>		URINALS (FIXTURES PER PERSON)	LAVATORIES (FIXTURES PER PERSON)		BATHTUBS OR SHOWERS (FIXTURES PER PERSON)	DRINKING FOUNTAINS/ FACILITIES (FIXTURES PER PERSON)	OTHER
	Male	Female		Male	Female			
<u>R-3 Residential occupancy (one and two family dwellings)</u>	1 per one and two family dwelling			1 per one and two family dwelling		1 per one and two family dwelling		1 kitchen sink and 1 automatic clothes washer connection per one and two family dwelling
<u>R-4 Residential occupancy (residential care or assisted living)</u>	Male 1 per 10	Female 1 per 8		Male 1 per 12	Female 1 per 12	1 per 8	1 per 150	1 service sink or laundry tray
<u>S-1, S-2 Storage occupancy-storage of goods, warehouse, aircraft hanger, food products, appliances</u>	Male 1: 1-100 2: 101-200 3: 201-400	Female 1: 1-100 2: 101-200 3: 201-400		Male 1: 1-200 2: 201-400 3: 401-750	Female 1: 1-200 2: 201-400 3: 401-750		1: 1-250 2: 251-500 3: 501-750	1 service sink or laundry tray
	Over 400, add 1 fixture for each additional 500 males and 1 fixture for each additional 150 females.			Over 750, add 1 fixture for each additional 500 persons.			Over 750, add 1 fixture for each additional 500 persons.	

**Notes:**

- <sup>1</sup> The figures shown are based upon one fixture being the minimum required for the number of persons indicated or any fraction thereof.
- <sup>2</sup> A restaurant is defined as a business that sells food to be consumed on the premises.
  - a. The number of occupants for a drive-in restaurant shall be considered as equal to the number of parking stalls.
  - b. Hand-washing facilities shall be available in the kitchen for employees.
- <sup>3</sup> The total number of required water closets for females shall be not less than the total number of required water closets and urinals for males.

~~047.~~ Section ~~420~~**18.0**. Pressure balance or thermostatic mixing valves are not required for high flow (over eight (8) g.p.m.) tub filler valves with hand shower sets attached. (3-15-02)( )

~~05.~~ Section ~~421.0~~. Delete. (4-6-05)

**08.** Section **504.1 Inspection of Chimneys or Vents**. Add the following to the end of section 504.1: Water heating appliances using Category 3 or 4 exhaust venting shall be tested in its entirety with five (5) pounds of air for fifteen (15) minutes. Plastic vents shall be constructed using manufacturer's instructions. ( )

**09.** Section **505.1 Location**. Add the following paragraph at the end of section 505.1: (3) Water heaters shall not be located in a crawl space. ( )

**10. Section 508.14 Installation in Residential Garages.** Replace 508.14 (1) with the following: Any plumbing appliance or appurtenance in residential garages and in adjacent spaces that open to the garage and are not part of the living space of a dwelling unit shall be installed so that burners, burner-ignition devices or other sources of ignition are located not less than eighteen (18) inches (450 mm) above the floor unless listed as flammable vapor ignition resistant. ( )

**11. Section 603.4.16.5 Residential Sprinkler System.** Add the following to the end of section 603.4.16.5: and the requirements of the Authority Having Jurisdiction (AHJ). ( )

**0612. Section 604.1. Materials.** Crosslinked Polyethylene (PEX) Tubing manufactured to ASTM – F876/F877 and tested, approved, and listed to ANSI/NSF 14 and 61, for potable water along with all applicable installation standards may be used for hot and cold water distribution systems within a building or cold water distribution systems outside of a building. Listed PE (polyethylene) water service and yard piping may be installed within a building (above ground and below ground) with one (1) joint, provided that only listed and approved metallic transition fittings shall be used. (4-6-05)

**13. Section 609.1 Installation.** Delete the following sentence: Water service yard piping shall be not less than twelve (12) inches (305 mm) below the average local frost depth; and replace it with the following: The cover shall be not less than forty-two (42) inches (1068mm) below grade. ( )

**0714. Section 609.4 Testing.** Testing. Deleting the phrase “Except for plastic piping,” at the beginning of the third sentence and add the following sentence at the end of the section: Plastic piping is to be tested in accordance with manufacturer’s installation standards. (4-6-05)( )

**0815. Section 609.10- Water #Hammer.** Does not apply to residential construction. (7-1-98)( )

**0916. Table 6-45 and Appendix Table A-2.** Change fixture unit loading value for both public and private for bathtub or combination bath/shower, and clothes washers to two (2) fixture units. (3-15-02)( )

**107. Section 610.2. Add the following:** All new one (1) and two (2) family residences built slab on grade or that will have a finished basement at the time of final inspection must have a pre-plumbed water softener loop. The kitchen sink must have one (1) hot soft line and one (1) cold soft line and one (1) cold hard line. Exterior cold hose bibbs intended for irrigation purposes must be piped with hard water. (3-30-07)( )

**118. Section 611.4- Table 6-8 Sizing of Residential Softeners.** Amend Footnote 3 to read: Over four (4) bathroom groups, softeners shall be sized according to the manufacturer’s standards. (4-6-05)( )

**129. Table 7-3 Drainage Fixture Unit Valves (DFU).** Maximum unit loading and maximum length of drainage and vent piping. (EXCEPTION) The building drain and building sewer is not less than four (4) inches extending from its connection with the city or private sewer system and shall run full size to inside the foundation or building lines (ref: Section 717.0). Change fixture unit loading value for clothes washers, domestic for private to two (2) fixture units. (3-15-02)( )

**1320. Section 703.1—Underground Drainage and Vent Piping.** Add the following at the end of section 703.1: No portion of the drainage or vent system installed underground, underground under concrete or below a basement or cellar shall be less than two (2) inches in diameter. (3-15-02)( )

**1421. Section 703.2 and 710.5. Add Exception.** In single family dwellings, one (1) fixture unit may be allowed for each gallon per minute of flow from a pump or a sump ejector. (3-15-02)

**1522. Section 704.2.** Two inch (2”) and smaller double sanitary tees may be used for back to back or side by side fixture trap arms without increasing the barrel size. (4-6-05)

**1623. Section 704.3.** Delete. (5-3-03)

**1724. Table 7-5.** Change fixture unit loading value for one and a half (1 1/2) inch horizontal drainage to two (2) fixture units. (7-1-98)

**25. Section 707.0 Cleanouts.** Add the following: A clean out shall be installed for double sanitary tees two (2) inches (50 mm) or less in diameter that receive the discharge from fixture connections. Exception in Section 707.4 shall not apply. ( )

**26. Section 707.4 Cleanouts.** A full-sized accessible cleanout shall be installed in the vertical immediately above the floor or at the base of each waste or soil stack. A full-size cleanout extending to or above finished grade line shall be installed at the junction of the building drain and the building sewer (ref.: Section 719.1). Cleanouts shall be installed at fifty (50) foot intervals in horizontal drain lines two (2) inches or smaller. (3-15-02)

**27. Section 710.9.** Add: Exception: One (1) pump shall be permitted for "public use" occupancies provided that such tank receives the discharge of not more than one (1) water closet and ten (10) fixture units. ( )

**28. Section 712.1 Media.** In the first sentence, delete the phrase "except that plastic pipe shall not be tested with air." (4-6-05)( )

**29. Section 717.0 Size of Building Sewers.** Add the following to the end of section 717.0: Exception: The building drain and building sewer is not less than four (4) inches extending from its connection with the city or private sewer system and shall run full size to inside the foundation or building lines. ( )

**30. Section 801.2.3.** Add: Food preparation sinks, pot sinks, scullery sinks, dishwashing sinks, silverware sinks, commercial dishwashing machines, silverware-washing machines, steam kettles, potato peelers, ice cream dipper wells, and other similar equipment and fixtures must be indirectly connected to the drainage system by means of an air gap. The piping from the equipment to the receptor must not be smaller than the drain on the unit, but it must not be smaller than one (1) inch (twenty-five and four tenths (25.4) mm). (5-3-03)

**31. Section 801.4. Drains Connections from Water Distribution System.** Provisions must be made for the discharge of the water softener to terminate in an approved location. The drain line for a water softener must be three-fourths (3/4) inch minimum. A washer box with a dual outlet is an approved location as long as it is on the same floor or one (1) floor below the softener unit and the water softener drain line is a minimum three-fourths (3/4) inch. (3-30-07)( )

**32. Section 807.4.** A domestic dishwashing machine may be installed without the use of an airgap if the drain hose is looped to the bottom side of the counter top and secured properly. (3-15-02)

**33. Section 906.1.** Delete the existing provision and replace with the following: (4-2-08)

**a.** Roof venting. When conventional roof venting is utilized, each vent pipe or stack shall extend through its flashing and shall terminate vertically not less than six (6) inches (one hundred fifty-two (152) mm) above the roof nor less than one (1) foot (three hundred five (305) mm) from any vertical surface. (4-2-08)

**b.** Sidewall venting. When sidewall venting is utilized, the vent shall extend flush with the eaves/gable end, shall turn down using a ninety (90) degree ell, and shall terminate as close to the roof peak as possible. The vent end must be properly screened. Sidewall venting is acceptable on new or remodel construction on cabins, log homes, and residential or commercial buildings. (4-2-08)

**c.** Sidewall venting must meet the intent of Section 906.2 of the UPSPC. (4-2-08)( )

**34. Section 908. Exception - Vertical Wet Venting.** A horizontal wet vent may be created provided it is created in a vertical position and all other requirements of Section 908 of the UPSPC are met. (7-1-98)( )

**35. Section 909.0.** Add: Parameters for the limited use of Air Admittance Valves (A.A.V.). (4-2-08)

**a.** An A.A.V. may be used only in residential buildings. (4-2-08)

**b.** In remodels, an A.A.V. may be used with island fixtures or remotely located sinks such as in bar, kitchen, or laundry tray locations. An A.A.V. shall not be used in bathroom groups. (4-2-08)

- c. In new construction, an A.A.V. may be used on island fixture sinks. (4-2-08)
  - d. Each A.A.V. may be used to vent only one (1) floor. (4-2-08)
  - e. Each A.A.V. must be readily accessible. (4-2-08)
  - f. The cross-sectional area of venting must remain the same and must meet the largest required building drain. (4-2-08)
  - g. An A.A.V. shall only be installed in accordance with the manufacturer's installation standards as per ASSE 1051. (4-2-08)
  - h. An A.A.V. may not be used in an attic, crawl space, outside installation, or in connection with chemical or acid waste systems. (4-2-08)
- 236.** Section 1002.3. Trap arms may not exceed one hundred eighty (180) degrees of horizontal turn without the use of a cleanout. (3-15-02)

**37. Section 1007.0 Trap Seal Protection.** Delete section 1007.0 and replace with the following: Floor drains or similar traps directly connected to the drainage system and subject to infrequent use shall be protected with a trap seal primer or other approved trap seal protection device, except where not deemed necessary for safety or sanitation by the Authority Having Jurisdiction. Trap seal primers shall be accessible for maintenance. ( )

**38. Section 1016.1 Where Required.** Add the following to the end of section 1016.1: Floor drains installed in residential garages shall be permitted to use the interceptor as the fixture trap. ( )

**39. 1601.0 Gray Water Systems - General.** Add to this section the following paragraph: (G) Plumbing for a gray water system from any fixture up to, but not to include the exterior irrigation system tank shall be inspected by the Authority Having Jurisdiction. The Idaho Department of Environmental Quality (IDEQ) shall have jurisdiction to inspect and approve the installation of the exterior irrigation system tank and all piping therefrom to the point of disposal in accordance with IDAPA 58.01.03, "Individual/Subsurface Sewage Disposal Rules." Gray water system location and design criteria requirements related to irrigation and leaching shall be determined in accordance with the requirements as established by the IDEQ. ( )

## **IDAPA 07 - DIVISION OF BUILDING SAFETY**

### **07.03.01 - RULES OF BUILDING SAFETY**

#### **DOCKET NO. 07-0301-1201**

#### **NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 39-4107 and 39-4109 Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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:

Adoption of the 2012 editions of the International Building Code and International Existing Building Code was the result of negotiated rulemaking involving the building industry, local building officials, and other interested stakeholders. Amendment proposals submitted by local building officials through this process resulted in the Board's recognition that amending several provisions could save property owners significant expense without an adverse effect on health and safety. Specifically, that drinking fountains and service sinks should only be required in certain business occupancies with an occupancy load of 30 persons or more, as opposed to the existing provision of 15 persons. Additionally, adoption of the 2012 building code captures the most up to date building code provisions consistent with recent amendments to accessibility standards in commercial facilities and places of public accommodation in accordance with the ADA. This rulemaking would result in the adoption of the 2012 International Building Code (IBC) and 2012 International Existing Building Code (IEBC) as the law in Idaho. Further amendments to the 2012 IBC would require drinking fountains and service sinks only in business occupancies with an occupancy load of more than 30 persons except for restaurants and mercantile establishments.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

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

No impact to the general fund; increased short-term cost to code jurisdictions for code materials and training of inspectors. Amendments to the new code result in decreases in cost that offset minor cost increases associated with new provisions contained in the code. No significant additional costs of conformance with the new versions of the codes were brought forward in discussions before the Board.

**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 March 7, 2012 Idaho Administrative Bulletin, [Vol. 12-3, page 23](#), and in the June 6, 2012 Idaho Administrative Bulletin, [Vol. 12-6, pages 15 and 16](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

Adoption of the International Building Code, 2012 Edition, with amendments; and adoption of the International Existing Building Code 2012 Edition.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.



DATED this 28th day of August, 2012.

Steve Keys  
Deputy Administrator - Operations  
Division of Building Safety  
1090 E. Watertower St.  
P. O. Box 83720  
Meridian, ID 83642  
Phone: (208) 332-8986  
Fax: (208) 1-877-810-2840

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0301-1201**

**004. ADOPTION AND INCORPORATION BY REFERENCE.**

Under the provisions of Section 39-4109, Idaho Code, the codes enumerated in this Section are hereby adopted and incorporated by reference into IDAPA 07.03.01, "Rules of Building Safety," Division of Building Safety. The effective date of a 2009 edition of any of the codes adopted in this Section with any amendments identified thereto shall be January 1, 2011. Until such time, the 2006 edition of any such code enumerated in this Section without amendment will remain effective pursuant to Section 39-4109, Idaho Code. Copies of these documents may be reviewed at the office of the Division of Building Safety. The referenced codes may be obtained from International Code Council, 5360 Workman Mill Road, Whittier, California 90601-2298 or the [International Code Council](http://www.iccsafe.org) at <http://www.iccsafe.org>. (3-29-10)

**01. International Building Code. 2009~~12~~ Edition- with the following amendments: ~~(3-29-10)~~( )**

**a.** Delete footnote (f) contained under Table 2902.1 Minimum Number of Required Plumbing Fixtures, and replace with the following: Drinking fountains are not required for an occupant load of thirty (30) or fewer. ( )

**b.** Add the following footnote to Table 2902.1 Minimum Number of Required Plumbing Fixtures: (g) For business occupancies, excluding restaurants, and mercantile occupancies with an occupant load of thirty (30) or fewer, service sinks shall not be required. ( )

**02. International Residential Code. 2009 Edition. (3-29-10)**

**a.** Delete the exception contained under IRC section R101.2 - Scope. (4-7-11)

**b.** Delete item No. 2 contained under the "Building" subsection of IRC section R105.2 - Work exempt from permit, and replace with the following: Fences not over six (6) feet (one thousand, eight hundred twenty-nine (1,829) mm) high may be exempted from the requirement for a building permit in the absence of any other applicable land use regulations governing the installation, height, type or other aspect. (4-7-11)

**c.** Delete item No. 7 contained under the "Building" subsection of IRC section R105.2 - Work exempt from permit, and replace with the following: Prefabricated swimming pools that are not greater than four (4) feet (one thousand, two hundred nineteen (1219) mm) deep. (4-7-11)

**d.** Delete IRC section R109.1.3 and replace with the following: Floodplain inspections. For construction in areas prone to flooding as established by Table R301.2(1), upon placement of the lowest floor, including basement, the building official is authorized to require submission of documentation of the elevation of the lowest floor, including basement, required in section R322. (3-29-10)

e. IRC Table R302.1 Exterior Walls -- delete the figures contained in the last column of the table under the heading Minimum Fire Separation Distance, and replace with the following:

Minimum Fire Separation Distance	
Walls (fire-resistance rated):	< Three (3) Feet
Walls (not fire-resistance rated):	≥ Three (3) Feet
Projections (fire-resistance rated):	< Three (3) Feet
Projections (not fire-resistance rated):	≥ Three (3) Feet

(3-29-10)

f. Delete the exception contained under IRC section R302.2 -- Townhouses, and replace with the following: Exception: A common one-hour or two-hour fire resistance rated wall assembly tested in accordance with ASTM E 119 or UL 263 is permitted for townhouses if such walls do not contain plumbing or mechanical equipment, ducts or vents in the cavity of the common wall. The wall shall be rated for fire exposure from both sides and shall extend to and be tight against the exterior walls and the underside of the roof sheathing. Penetrations of electrical outlet boxes shall be in accordance with section R302.4. (3-29-10)

g. Delete the exception contained under IRC section R313.1 -- Townhouse automatic fire sprinkler systems, and replace with the following: Exception: Automatic residential fire sprinkler systems shall not be required in townhouses where a two-hour fire-resistance rated wall is installed between dwelling units or when additions or alterations are made to existing townhouses that do not have an automatic residential fire sprinkler system installed. (3-29-10)

h. Delete IRC section R313.2. (3-29-10)

i. Delete IRC section R322.1.10. (3-29-10)

j. Delete IRC section R322.2.2 paragraph 2.2, and replace with the following: The total net area of all openings shall be at least one (1) square inch (645 mm<sup>2</sup>) for each square foot (0.093 m<sup>2</sup>) of enclosed area, or the opening shall be designed and the construction documents shall include a statement that the design and installation of the openings will provide for equalization of hydrostatic flood forces on exterior walls by allowing the automatic entry and exit of floodwaters. (3-29-10)

**03. International Existing Building Code.** 2009~~12~~ Edition. ~~(3-29-10)~~( )

**04. International Energy Conservation Code.** 2009 Edition with the following amendments. (4-7-11)

a. Add the following footnote to the title of Table 402.1.1 - Insulation and Fenestration Requirements by Component: <sup>k</sup>. For residential log home building thermal envelope construction requirements see section 402.6. (4-7-11)

b. Add the following section: 402.6 Residential Log Home Thermal Envelope. Residential log home construction shall comply with sections 401 (General), 402.4 (Air Leakage), 402.5 (Maximum Fenestration U-Factor and SHGC), 403.1 (Controls), 403.2.2 (Sealing), 403.2.3 (Building Cavities), sections 403.3 through 403.9 (referred to as the mandatory provisions), Section 404 (Electrical Power and Lighting Systems), and either Subparagraph 004.04.b.i., ii., or iii. as follows: (4-7-11)

i. Sections 402.2 through 402.3, 403.2.1, 404.1 and Table 402.6; (4-7-11)

ii. Section 405 Simulated Performance Alternative (Performance); or (4-7-11)

iii. REScheck (U.S. Department of Energy Building Codes Program). (4-7-11)

c. Add Table 402.6 Log Home Prescriptive Thermal Envelope Requirements By Component to be used only in accordance with Subparagraph 004.04.b.i. above to appear as follows:

**TABLE 402.6**  
**LOG HOME PRESCRIPTIVE THERMAL ENVELOPE REQUIREMENTS BY COMPONENT**

For SI: 1 foot = 304.8 mm.

CLIMATE ZONE	FENESTRATION U-FACTOR <sup>a</sup>	SKYLIGHT U-FACTOR	GLAZED FENESTRATION SHGC	CEILING R-VALUE	Min. Average LOG Size in inches	FLOOR R-VALUE	BASEMENT WALL R-VALUE <sup>d</sup>	SLAB R-VALUE & DEPTH <sup>b</sup>	CRAWL SPACE WALL R-VALUE <sup>d</sup>
5, 6 - High efficiency equipment path <sup>c</sup>	0.32	0.60	NR	49	5	30	15/19	10, 4 ft.	10/13
5	0.32	0.60	NR	49	8	30	10/13	10, 2 ft.	10/13
6	0.30	0.60	NR	49	8	30	15/19	10, 4 ft.	10/13

- a. The fenestration U-factor column excludes skylights. The SHGC column applies to all glazed fenestration.
- b. R-5 shall be added to the required slab edge R-values for heated slabs.
- c. 90% AFUE natural gas or propane, 84% AFUE oil, or 15 SEER heat pump heating equipment (zonal electric resistance heating equipment such as electric base board electric resistance heating equipment as the sole source for heating is considered compliant with the high efficiency equipment path).
- d. "15/19" means R-15 continuous insulated sheathing on the interior or exterior of the home or R-19 cavity insulation at the interior of the basement wall. "15/19" shall be permitted to be met with R-13 cavity insulation on the interior of the basement wall plus R-5 continuous insulated sheathing on the interior or exterior of the home. "10/13" means R-10 continuous insulated sheathing on the interior or exterior of the home or R-13 cavity insulation at the interior of the basement wall.

(4-7-11)

**05. References to Other Codes.** Where any provisions of the codes that are adopted in this Section make reference to other construction and safety-related model codes or standards which have not been adopted by the involved authority having jurisdiction, to the extent possible, such reference should be construed as pertaining to the equivalent code or standard that has been duly adopted by such jurisdiction. (3-29-10)

## **IDAPA 07 - DIVISION OF BUILDING SAFETY**

### **07.03.01 - RULES OF BUILDING SAFETY**

**DOCKET NO. 07-0301-1202**

### **NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 39-4107 and 39-4109 Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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:

Amendment proposals submitted by the public and local building officials through the negotiated rulemaking process resulted in the Board's recognition that amending several provisions could save property owners significant expense without an adverse effect on health and safety. Although this rulemaking amends several provisions of these codes for this purpose, it maintains the 2009 Residential Code and 2009 Energy Code as the law in Idaho. Specifically, this amendment prevents the requirement of carbon monoxide alarms within an existing residential dwelling merely because work is being performed on the exterior of the dwelling, or to other unrelated systems. It also provides energy cost savings in the area of fireplaces. Amendments prevent carbon monoxide alarms from being necessarily required in an existing dwelling unit merely upon the purchase of a permit for work involving the exterior of the dwelling, electrical work, or alteration or repairs of non-combustion plumbing or mechanical work. Additionally, amendment will require new wood-burning fireplaces to have tight-fitting flue dampers as opposed to gasketed doors; a much more workable solution recognized in the 2012 edition of the code.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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:

Approval of the amendments will result in negligible decreases in permit fees due to reductions in the cost of construction, but the changes will significantly reduce the cost of construction which benefits the facility owner. No impact to the general fund.

**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 March 7, 2012 Idaho Administrative Bulletin, [Vol. 12-3, page 23](#), and in the June 6, 2012 Idaho Administrative Bulletin, [Vol. 12-6, pages 15 and 16](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

Amendments to the International Residential Code, 2009 Edition; and amendments to the International Energy Conservation Code, 2009 Edition.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 29th day of August, 2012.

Steve Keys  
Deputy Administrator - Operations  
Division of Building Safety  
1090 E. Watertower St.  
P. O. Box 83720  
Meridian, ID 83642  
Phone: (208) 332-8986  
Fax: (208) 1-877-810-2840

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0301-1202**

**004. ADOPTION AND INCORPORATION BY REFERENCE.**

Under the provisions of Section 39-4109, Idaho Code, the codes enumerated in this Section are hereby adopted and incorporated by reference into IDAPA 07.03.01, "Rules of Building Safety," Division of Building Safety. The effective date of a 2009 edition of any of the codes adopted in this Section with any amendments identified thereto shall be January 1, 2011. Until such time, the 2006 edition of any such code enumerated in this Section without amendment will remain effective pursuant to Section 39-4109, Idaho Code. Copies of these documents may be reviewed at the office of the Division of Building Safety. The referenced codes may be obtained from International Code Council, 5360 Workman Mill Road, Whittier, California 90601-2298 or the [International Code Council](http://www.iccsafe.org) at <http://www.iccsafe.org>. (3-29-10)

**01. International Building Code.** 2009 Edition. (3-29-10)

**02. International Residential Code.** 2009 Edition- with the following amendments: ~~(3-29-10)~~( )

**a.** Delete the exception contained under IRC section R101.2 - Scope. (4-7-11)

**b.** Delete item No. 2 contained under the "Building" subsection of IRC section R105.2 - Work exempt from permit, and replace with the following: Fences not over six (6) feet (one thousand, eight hundred twenty-nine (1,829) mm) high may be exempted from the requirement for a building permit in the absence of any other applicable land use regulations governing the installation, height, type or other aspect. (4-7-11)

**c.** Delete item No. 7 contained under the "Building" subsection of IRC section R105.2 - Work exempt from permit, and replace with the following: Prefabricated swimming pools that are not greater than four (4) feet (one thousand, two hundred nineteen (1219) mm) deep. (4-7-11)

**d.** Delete IRC section R109.1.3 and replace with the following: Floodplain inspections. For construction in areas prone to flooding as established by Table R301.2(1), upon placement of the lowest floor, including basement, the building official is authorized to require submission of documentation of the elevation of the lowest floor, including basement, required in section R322. (3-29-10)

**e.** IRC Table R302.1 Exterior Walls -- delete the figures contained in the last column of the table under the heading Minimum Fire Separation Distance, and replace with the following:

Minimum Fire Separation Distance	
Walls (fire-resistance rated):	< Three (3) Feet
Walls (not fire-resistance rated):	≥ Three (3) Feet
Projections (fire-resistance rated):	< Three (3) Feet
Projections (not fire-resistance rated):	≥ Three (3) Feet

(3-29-10)

**f.** Delete the exception contained under IRC section R302.2 -- Townhouses, and replace with the following: Exception: A common one-hour or two-hour fire resistance rated wall assembly tested in accordance with ASTM E 119 or UL 263 is permitted for townhouses if such walls do not contain plumbing or mechanical equipment, ducts or vents in the cavity of the common wall. The wall shall be rated for fire exposure from both sides and shall extend to and be tight against the exterior walls and the underside of the roof sheathing. Penetrations of electrical outlet boxes shall be in accordance with section R302.4. (3-29-10)

**g.** Delete the exception contained under IRC section R313.1 -- Townhouse automatic fire sprinkler systems, and replace with the following: Exception: Automatic residential fire sprinkler systems shall not be required in townhouses where a two-hour fire-resistance rated wall is installed between dwelling units or when additions or alterations are made to existing townhouses that do not have an automatic residential fire sprinkler system installed. (3-29-10)

**h.** Delete IRC section R313.2. (3-29-10)

**i.** Add the following to IRC section R315.2 - Where required in existing dwellings: Exceptions: 1. Work involving the exterior surfaces of dwellings, such as, but not limited to, replacement of roofing or siding, or the addition or replacement of windows or doors, or the addition of a porch or deck or electrical permits, are exempt from the requirements of this section; and 2. Installation, alteration or repairs of noncombustion plumbing or mechanical systems are exempt from the requirements of this section. ( )

**ij.** Delete IRC section R322.1.10. (3-29-10)

**jk.** Delete IRC section R322.2.2 paragraph 2.2, and replace with the following: The total net area of all openings shall be at least one (1) square inch (645 mm<sup>2</sup>) for each square foot (0.093 m<sup>2</sup>) of enclosed area, or the opening shall be designed and the construction documents shall include a statement that the design and installation of the openings will provide for equalization of hydrostatic flood forces on exterior walls by allowing the automatic entry and exit of floodwaters. (3-29-10)

**l.** Delete section N1102.4.3 and replace with the following: Fireplaces. New wood-burning fireplaces shall have tight-fitting flue dampers and outdoor combustion air. ( )

**03.** **International Existing Building Code.** 2009 Edition. (3-29-10)

**04.** **International Energy Conservation Code.** 2009 Edition with the following amendments. (4-7-11)

**a.** Add the following footnote to the title of Table 402.1.1 - Insulation and Fenestration Requirements by Component: <sup>k</sup> For residential log home building thermal envelope construction requirements see section 402.6. (4-7-11)

**b.** Delete section 402.4.3 and replace with the following: Fireplaces. New wood-burning fireplaces shall have tight-fitting flue dampers and outdoor combustion air. ( )

**bc.** Add the following section: 402.6 Residential Log Home Thermal Envelope. Residential log home construction shall comply with sections 401 (General), 402.4 (Air Leakage), 402.5 (Maximum Fenestration U-Factor and SHGC), 403.1 (Controls), 403.2.2 (Sealing), 403.2.3 (Building Cavities), sections 403.3 through 403.9 (referred to as the mandatory provisions), Section 404 (Electrical Power and Lighting Systems), and either Subparagraph 004.04.b.i., ii., or iii. as follows: (4-7-11)

i. Sections 402.2 through 402.3, 403.2.1, 404.1 and Table 402.6; (4-7-11)

ii. Section 405 Simulated Performance Alternative (Performance); or (4-7-11)

iii. REScheck (U.S. Department of Energy Building Codes Program). (4-7-11)

**ed.** Add Table 402.6 Log Home Prescriptive Thermal Envelope Requirements By Component to be used only in accordance with Subparagraph 004.04.b.i. above to appear as follows:

**TABLE 402.6**  
**LOG HOME PRESCRIPTIVE THERMAL ENVELOPE REQUIREMENTS BY COMPONENT**

For SI: 1 foot = 304.8 mm.

CLIMATE ZONE	FENESTRATION U-FACTOR <sup>a</sup>	SKYLIGHT U-FACTOR	GLAZED FENESTRATION SHGC	CEILING R-VALUE	Min. Average LOG Size in inches	FLOOR R-VALUE	BASEMENT WALL R-VALUE <sup>d</sup>	SLAB R-VALUE & DEPTH <sup>b</sup>	CRAWL SPACE WALL R-VALUE <sup>d</sup>
5, 6 - High efficiency equipment path <sup>c</sup>	0.32	0.60	NR	49	5	30	15/19	10, 4 ft.	10/13
5	0.32	0.60	NR	49	8	30	10/13	10, 2 ft.	10/13
6	0.30	0.60	NR	49	8	30	15/19	10, 4 ft.	10/13

a. The fenestration U-factor column excludes skylights. The SHGC column applies to all glazed fenestration.

b. R-5 shall be added to the required slab edge R-values for heated slabs.

c. 90% AFUE natural gas or propane, 84% AFUE oil, or 15 SEER heat pump heating equipment (zonal electric resistance heating equipment such as electric base board electric resistance heating equipment as the sole source for heating is considered compliant with the high efficiency equipment path).

d. "15/19" means R-15 continuous insulated sheathing on the interior or exterior of the home or R-19 cavity insulation at the interior of the basement wall. "15/19" shall be permitted to be met with R-13 cavity insulation on the interior of the basement wall plus R-5 continuous insulated sheathing on the interior or exterior of the home. "10/13" means R-10 continuous insulated sheathing on the interior or exterior of the home or R-13 cavity insulation at the interior of the basement wall.

(4-7-11)

**05. References to Other Codes.** Where any provisions of the codes that are adopted in this Section make reference to other construction and safety-related model codes or standards which have not been adopted by the involved authority having jurisdiction, to the extent possible, such reference should be construed as pertaining to the equivalent code or standard that has been duly adopted by such jurisdiction. (3-29-10)

## **IDAPA 07 - DIVISION OF BUILDING SAFETY**

### **07.03.12 - RULES GOVERNING MANUFACTURED OR MOBILE HOME INSTALLATIONS**

#### **DOCKET NO. 07-0312-1201 (FEE RULE)**

#### **NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 44-2104, 44-2201 and 44-2202, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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:

Amendment to the rules is necessary to align them with statutory changes that were approved last year. Those statutory amendments were made to ensure compliance with mandatory federal HUD requirements regarding inspections of installations and tracking of manufactured homes. The Division of Building Safety serves as the State Administrative Agency (SAA) responsible for enforcing the federal installation standards in Idaho and has obligated itself by agreement with HUD to ensure that all installations in the state will be inspected. Amendments will require an inspection of the installation of all new and used manufactured and mobile homes by either the Division of Building Safety or the local city or county having jurisdiction. In compliance with statute, criteria is also set forth for approval by the Division of an installation inspection program by local jurisdictions, as well as training criteria for all inspectors. A fee schedule applicable to the Division for various types of homes is established. Amendment will also require an installation tag for all new manufactured homes in order that their location and ownership may be tracked. Finally, amendment establishes the minimum requirements of each installation inspection that is performed.

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

Pursuant to the authority in Section 44-2202, Idaho Code, this rulemaking establishes fees for the installation of manufactured or mobile homes as follows:

The permit fee for installation of single section units will be one hundred fifty dollars (\$150); the permit fee for installation of a double section unit will be two hundred dollars (\$200); and the permit fee for installation of homes consisting of more than two (2) sections will be two hundred fifty dollars (\$250).

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

No impact on the general fund. The fees imposed for installation permits are designed to cover the costs of the inspection service, and as such are intended to provide revenue in line with incurred costs. The fees and costs incurred will be reviewed on an ongoing basis to assure they are appropriate. Should Idaho not provide the installation inspections, the federal government will provide the service at what would be anticipated to be a higher cost to the consumer.

**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 April 4, 2012 Idaho Administrative Bulletin, [Vol. 12-4, page 14](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations at (208)



332-8986.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 10th day of August, 2012.

Steve Keys - Deputy Administrator - Operations  
Division of Building Safety  
1090 E. Watertower St.  
P. O. Box 83720, Meridian, ID 83642  
Phone: (208) 332-8986 / Fax: (208) 1-877-810-2840

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0312-1201**

**013. INSTALLATION PERMITS AND INSPECTIONS REQUIRED.**

~~01. **Installation Permit.** The owner or the installer of a manufactured or mobile home must shall obtain an installation permit as required by in accordance with the requirements of Section 44-2202, Idaho Code. Installation permits shall be obtained from the Division of Building Safety for installations in areas where there is no approved local program, or from a city or county that has by ordinance before installing a adopted building codes pursuant to Section 39-4116, Idaho Code, and whose installation program has been approved by the Division. Installation permits shall only be issued to the owner of the manufactured or mobile home that will be used as a residence on a building site or in a park or to a licensed installer. The installer must have a current and valid license in effect at the time of the application for the installation permit. All installations shall be inspected and approved by the authority having jurisdiction before the manufactured home is occupied. (5-3-03)( )~~

~~02. **City or County Jurisdiction.** Cities and counties, which have by ordinance adopted a building code, shall establish a permit process for the installation of all manufactured or mobile homes within their respective jurisdictions and shall provide for inspection of all work required by the installation provisions of the Idaho Manufactured Home Installation, pursuant to the provisions of Section 44-2202, Idaho Code. Fees for installation permits and inspections shall be as established by the city or county having jurisdiction. (5-3-03)~~

**014. INSTALLATION PERMIT FEES.**

A city or county whose installation inspection program has been approved by the Division shall establish their own fee schedule for installation permits within their jurisdiction. Permits obtained from the Division shall be accompanied by a fee in accordance with the following schedule: ( )

01. **Single Section Unit.** The permit fee for a single section unit shall be one hundred fifty dollars (\$150). ( )

02. **Double Section Unit.** The permit fee for a double section unit shall be two hundred dollars (\$200). ( )

03. **More Than Two Sections.** The permit fee for a home consisting of more than two (2) sections shall be two hundred fifty dollars (\$250). ( )

04. **Electrical and Plumbing Permits.** Electrical and plumbing permits are administered separately from installation permits, and fees for such are separate from the fees identified in Section 014. Such fees shall be paid to the Division or other jurisdiction in accordance with the rules promulgated by the governing boards or local ordinance. ( )

**015. INSTALLATION TAGS REQUIRED.**

The owner or installer of a new manufactured home must purchase an installation tag from the Division of Building Safety prior to commencing the installation of a manufactured home in Idaho. Such tag is required regardless of which jurisdiction has authority to perform the installation inspection. The fee for the installation tag shall be fifty dollars (\$50). ( )

**016. APPROVAL OF LOCAL MANUFACTURED HOME INSTALLATION INSPECTION PROGRAMS.**

**01. Division Approval.** A city or county that has by ordinance adopted a building code pursuant to Section 39-4116, Idaho Code, is eligible to participate in the inspection of manufactured and mobile homes. Such local installation inspection program shall be approved by the Division to provide inspection services if the following minimum criteria is met: ( )

**a.** Inspections are conducted by the city or county employing inspectors holding a valid certification as residential building inspector from the International Code Council; ( )

**b.** Inspectors have attended annual training sessions provided or approved by the Division of Building Safety and received a certificate evidencing successful completion thereof; and ( )

**c.** Approval of a city or county's inspection program has not been withdrawn by the Administrator of the Division of Building Safety. ( )

**02. Voluntary Withdrawal.** A city or county may voluntarily withdraw from participation in the program to inspect manufactured homes upon providing to the Administrator of the Division of Building Safety ninety (90) days written notice of its intention to do so. ( )

**017. WITHDRAWAL OF APPROVAL OF PROGRAMS.**

**01. Division Withdrawal.** Approval of city or county manufactured home installation program may be withdrawn by the Division of Building Safety if it determines that the city or county's program has failed, upon notification of the program deficiencies, to adequately remedy such deficiencies within a period of time specified by the Administrator. ( )

**02. Administrative Proceedings.** Proceedings which may result in the denial or withdrawal of approval shall be conducted in accordance with Title 67, Chapter 52, Idaho Code, and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." ( )

**03. Re-Approval.** Re-approval of a program may be made by the Division when it determines that the reasons for the withdrawal have been remedied. ( )

**018. MINIMUM TRAINING REQUIREMENTS FOR INSPECTORS.**

**01. Annual Training or Instruction.** All installation inspectors employed by the Division of Building Safety or a city or county shall complete four (4) hours of annual training or instruction dedicated to the installation and inspection of manufactured and mobile homes. ( )

**02. Division Approval.** All training and instruction shall be approved by the Division in order to qualify and satisfy the requirements in Subsection 018.01 of these rules. ( )

**03. Revocation of Approval.** Training or instruction approval is subject to revocation by the Division if in its discretion it determines that for any reason the training or instruction fails to meet the intent of furthering the education of manufactured home installation inspectors including, but not limited to, inadequacies in course content or methods of delivery. ( )

**019. QUALITY ASSURANCE.**

**01. Inspected Installations.** Any inspected installation shall be subject to quality assurance reviews by

Division of Building Safety at its discretion. Findings made by the Division pursuant to such reviews shall be forwarded to the inspection authority having jurisdiction. ( )

**02. Inspectors and Programs.** All inspectors and approved programs including Division of Building Safety shall be subject to review. ( )

**03. Reviews by Division Personnel.** Quality assurance reviews shall be performed by Division of Building Safety supervisory personnel who are experienced in and knowledgeable about the installation requirements for manufactured homes. ( )

**04. Division Personnel Training and Certification.** Supervisory personnel as identified in Section 019 of these rules, shall meet minimum training and certification requirements for inspectors of manufactured home installations. ( )

**020. MINIMUM SCOPE OF INSTALLATION INSPECTION.**

**01. Scope.** At a minimum, the inspection of the installation of a manufactured home shall include the following by an installer: ( )

**a.** Completion of an inspection record document as required by Section 44-2202(5), Idaho Code. The inspection record document shall verify that the installer has visually inspected the installation and shall certify that the exterior and interior close-up processes, including the marriage line and other covered-up components, have been completed; ( )

**b.** Delivery of a copy of the completed inspection record document to the homeowner and the authority having jurisdiction; ( )

**c.** Verification that all installed ductwork, plumbing, electrical and fuel supply systems are operating properly; and ( )

**d.** If applicable, verification that skirting has been installed correctly. ( )

**02. Inspection Minimum Requirements.** At a minimum, the inspection of the installation of a manufactured home shall include the following by an inspector: ( )

**a.** Verification that site location is suitable for home design and construction, and inspection of site-specific conditions, including preparation and grading for drainage; ( )

**b.** Inspection of the foundation construction; ( )

**c.** Verification that installed anchorage meets minimum requirements; and ( )

**d.** Verification of receipt of a completed inspection record document from the installer. ( )

**01421. SUPERVISION BY RESPONSIBLE MANAGING EMPLOYEE.**

A responsible managing employee, as the term is defined in IDAPA 07.03.11, "Rules Governing Manufactured/Mobile Home Licensing," Subsection 004.18, shall personally supervise any installation of a manufactured or mobile home at its place of occupancy unless the installer licensee personally supervises such installation. (5-3-03)

**01522. LICENSE SUSPENSION OR REVOCATION.**

The administrator may suspend or revoke or not renew any license for any willful or repeated violation of these rules or Title 44, Chapters 21 or 22, Idaho Code. Any such proceeding shall be handled as a contested case and according to the procedures set forth in IDAPA 07.03.11, "Rules Governing Manufactured/Mobile Home Licensing," Title 67, Chapter 52, Idaho Code, and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (5-3-03)

**01623. -- 999. (RESERVED)**

## IDAPA 07 - DIVISION OF BUILDING SAFETY

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

DOCKET NO. 07-0701-1201

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is September 1, 2012.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 54-5001 and 54-5005(2), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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:

Both DBS and local jurisdictions have encountered installations where the plastic pipe used to vent gas appliances was improperly connected, potentially allowing the release of carbon monoxide into a building. This change requires the contractor to test the piping, assuring that joints and connections are properly made. This rulemaking requires all plastic pipe within a dwelling used for venting flue gases to be tested at five (5) psi for fifteen (15) minutes.

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

A significant health and safety concern can potentially result where the plastic pipe used to vent gas appliances is improperly connected, potentially allowing the release of carbon monoxide into a building. HVAC enforcement jurisdictions have encountered such installations with sufficient frequency to be of concern.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 impact on the general or dedicated funds is expected. Some additional costs to installers will result.

**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 May 2, 2012 Idaho Administrative Bulletin, [Vol. 12-5, page 52](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

Amendment to the International Fuel Gas Code, 2009 Edition; and Amendment to Part V (Mechanical) and Part VI (Fuel Gas) of the International Residential Code for One- and Two-Family Dwellings, 2009 Edition is necessary to prevent the potential release of carbon monoxide into a building.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 21st day of August, 2012.

Steve Keys  
Deputy Administrator - Operations  
Division of Building Safety  
1090 E. Watertower St.  
P. O. Box 83720  
Meridian, ID 83642  
Phone: (208) 332-8986  
Fax: (208) 1-877-810-2840

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**THE FOLLOWING IS THE TEMPORARY RULE AND PROPOSED TEXT  
OF DOCKET NO. 07-0701-1201**

**005. ADOPTION AND INCORPORATION BY REFERENCE OF THE INTERNATIONAL FUEL GAS CODE, 2009 EDITION.**

**01. International Fuel Gas Code.** The 2009 Edition, including appendixes “A, B, C, and D,” (herein IFGC) is adopted and incorporated by reference with the following amendments: (4-7-11)

**a.** Where differences occur between the IFGC and Title 54, Chapter 50, Idaho Code and IDAPA 07, Title 07, the provisions in Idaho Code and IDAPA rules shall apply. (4-11-06)

**b.** All references to the International Plumbing Code (IPC) shall be construed as referring to the Uniform Plumbing Code (UPC) as adopted and amended by the Idaho State Plumbing Board. (4-11-06)

**c.** All references to the International Code Council Electrical Code (ICC EC) shall be construed as referring to the National Electrical Code (NEC) as adopted and amended by the Idaho State Electrical Board. (4-11-06)

**d.** Section 109. Delete. (7-1-10)

**e.** Section 406.4. Change the last sentence to: Mechanical gauges used to measure test pressure shall have a range such that the highest end of the scale is not greater than two (2) times the test pressure nor lower than one and one-half (1.5) times the test pressure. (4-11-06)

**f.** Section 406.4.1. Test Pressure. Not less than twenty (20) psig (140kPa gauge) test pressure shall be required for systems with a maximum working pressure up to ten (10) inches water column. For systems with a maximum working pressure between ten (10) inches water column and ten (10) psig (70kPa gauge); not less than sixty (60) psig (420kPa gauge) test pressure shall be required. For systems over ten (10) psig (70kPa gauge) working pressure, minimum test pressure shall be no less than six (6) times working pressure. (4-11-06)

**g.** Section 406.4.2. The test duration shall not be less than twenty (20) minutes. (4-11-06)

**h.** Section 408.4. Sediment Trap. Delete the last sentence and replace it with the following: Illuminating appliances, ranges, clothes dryers, outdoor grills, decorative vented appliances for installation in vented fireplaces, and gas fireplaces need not be so equipped. (4-7-11)

**i.** Add a new section 503.4.1.2 as follows: Testing. All plastic pipe within a dwelling used for venting flue gases shall be tested at five (5) psi for fifteen (15) minutes. (9-1-12)T

**ij.** Section 505.1.1. Addition. An interlock between the cooking appliance and the exhaust hood system shall not be required for appliances that are of the manually operated type and are factory equipped with standing pilot burner ignition systems. (4-11-06)

**02.** **Availability of the International Fuel Gas Code.** The 2009 Edition is available at the Division of Building Safety offices located at 1090 E. Watertower St., Suite 150 Meridian, Idaho 83642, 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814, and 2055 Garrett Way, Building 1, Suite 4, Pocatello, Idaho 83201. (4-7-11)

**006. ADOPTION AND INCORPORATION BY REFERENCE OF PART V (MECHANICAL) AND PART VI (FUEL GAS) OF THE INTERNATIONAL RESIDENTIAL CODE FOR ONE (1)- AND TWO (2)-FAMILY DWELLINGS, 2009 EDITION.**

**01. Part V (Mechanical) and Part VI (Fuel Gas) of the International Residential Code for One (1)- and Two (2)-Family Dwellings.** The 2009 Edition, including appendixes "A, B, C, and D," (herein IRC) is adopted and incorporated by reference with the following amendments: (4-7-11)

**a.** Where differences occur between the IRC and Title 54, Chapter 50, Idaho Code, and IDAPA 07, Title 07, Chapter 01, the provisions in Idaho Code and IDAPA rules shall apply. (4-7-11)

**b.** All references to the International Plumbing Code (IPC) shall be construed as referring to the Uniform Plumbing Code (UPC) as adopted and amended by the Idaho State Plumbing Board. (4-7-11)

**c.** All references to the International Code Council Electrical Code (ICC EC) shall be construed as referring to the National Electrical Code (NEC) as adopted and amended by the Idaho State Electrical Board. (4-7-11)

**d.** Section M1401.3. Sizing requirements shall be as established by the authority having jurisdiction. (4-7-11)

**e.** Section G2417.4 (406.4). Change the last sentence to: Mechanical gauges used to measure test pressure shall have a range such that the highest end of the scale is not greater than two (2) times the test pressure nor lower than one and one-half (1.5) times the test pressure. (4-7-11)

**f.** Section G2417.4.1 (406.4.1). Test Pressure. Not less than twenty (20) psig (one hundred forty (140) kPa gauge) test pressure shall be required for systems with a maximum working pressure up to ten (10) inches water column. For systems with a maximum working pressure between ten (10) inches water column and ten (10) psig (seventy (70) kPa gauge), not less than sixty (60) psig (four hundred twenty (420) kPa gauge) test pressure shall be required. For systems over ten (10) psig (seventy (70) kPa gauge) working pressure, minimum test pressure shall be no less than six (6) times working pressure. (4-7-11)

**g.** Section G2417.4.2 (406.4.2). The test duration shall not be less than twenty (20) minutes. (4-7-11)

**h.** Add a new section G2427.4.1.2 as follows: Testing. All plastic pipe within a dwelling used for venting flue gases shall be tested at five (5) psi for fifteen (15) minutes. (9-1-12)T

**02.** **Availability of the International Residential Code for One (1)- and Two (2)-Family Dwellings.** The 2009 Edition is available at the Division of Building Safety offices located at 1090 E. Watertower St., Suite 150 Meridian, Idaho 83642, 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814, and 2055 Garrett Way, Building 1, Suite 4, Pocatello, Idaho 83201. (4-7-11)

## IDAPA 07 - DIVISION OF BUILDING SAFETY

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

DOCKET NO. 07-0701-1202

#### 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 54-5001, 54-5004 and 54-5005(2), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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:

Currently the provisions of the International Residential Code adopted by the HVAC Board require appliances to be listed. This change provides a procedure for approval of unlisted appliances and is especially useful when dealing with restored antique stoves. The change requiring carbon monoxide detectors will assure that detectors are installed in areas where there is no local building code enforcement program. This rulemaking incorporates important sections of the IRC into the authority of the DBS and HVAC Board. It allows the DBS to accept the use of alternative materials, designs, or methods of construction if it complies with the intent of the code and is at least equivalent to the requirements prescribed by the code. It also allows the DBS to require tests of installation to ensure compliance with the code whenever there is insufficient evidence of such or to substantiate requests for alternative methods or materials. Finally, it requires the installation of carbon monoxide alarms in dwelling units.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

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

No impact on the general fund or the dedicated HVAC Board fund is expected. Positive impact on stakeholders is expected by allowing the agency to consider and potentially approve appliances that are not listed; this is particularly applicable to antique stoves. Carbon monoxide detectors are currently required by the portion of the International Residential Code (IRC) enforced by building inspectors; consequently, a negligible fiscal impact on property owners is expected.

**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 May 2, 2012 Idaho Administrative Bulletin, [Vol. 12-5, page 52](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

Amendment to Part V (Mechanical) and Part VI (Fuel Gas) of the International Residential Code for One- and Two-Family Dwellings, 2009 Edition, is necessary to provide a procedure for approval of unlisted appliances which is especially useful when dealing with restored antique stoves. The change requiring carbon monoxide detectors will assure that detectors are installed in areas where there is no local building code enforcement program.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 28th day of August, 2012.

Steve Keys  
Deputy Administrator - Operations  
Division of Building Safety  
1090 E. Watertower St.  
P. O. Box 83720  
Meridian, ID 83642  
Phone: (208) 332-8986  
Fax: (208) 1-877-810-2840

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0701-1202**

**006. ADOPTION AND INCORPORATION BY REFERENCE OF PART V (MECHANICAL) AND PART VI (FUEL GAS) OF THE INTERNATIONAL RESIDENTIAL CODE FOR ONE (1)- AND TWO (2)- FAMILY DWELLINGS, 2009 EDITION.**

**01. Part V (Mechanical) and Part VI (Fuel Gas) of the International Residential Code for One (1)- and Two (2)-Family Dwellings.** The 2009 Edition, including appendixes “A, B, C, and D,” (herein IRC) is adopted and incorporated by reference with the following amendments: (4-7-11)

**a.** Where differences occur between the IRC and Title 54, Chapter 50, Idaho Code, and IDAPA 07, Title 07, Chapter 01, the provisions in Idaho Code and IDAPA rules shall apply. (4-7-11)

**b.** All references to the International Plumbing Code (IPC) shall be construed as referring to the Uniform Plumbing Code (UPC) as adopted and amended by the Idaho State Plumbing Board. (4-7-11)

**c.** All references to the International Code Council Electrical Code (ICC EC) shall be construed as referring to the National Electrical Code (NEC) as adopted and amended by the Idaho State Electrical Board. (4-7-11)

**d.** Add the following as section M1201.3 and section G2402.4 (201.4): Alternative materials, design and methods of construction equipment. The provisions of this part of the code are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this code, provided that any such alternative has been approved. An alternative material, design or method of construction shall be approved where the authority having jurisdiction finds that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code. Compliance with the specific performance-based provisions of this part of the code in lieu of specific requirements of this code shall also be permitted as an alternate. ( )

**e.** Add the following as section M1201.3.1 and section G2402.4.1 (201.4.1): Tests. Whenever there is insufficient evidence of compliance with the provisions of this part of the code, or evidence that a material or method does not conform to the requirements of this part of the code, or in order to substantiate claims for alternative materials or methods, the authority having jurisdiction shall have the authority to require tests as evidence of compliance to be made at no expense to the jurisdiction. Test methods shall be as specified in this code or by other recognized test standards. In the absence of recognized and accepted test methods, the authority having jurisdiction shall approve the testing procedures. Tests shall be performed by an approved agency. Reports of such tests shall be



retained by the authority having jurisdiction for the period required for retention of public records. ( )

f. Add the following as section M1203.1: Carbon monoxide alarms. For new construction, an approved carbon monoxide alarm shall be installed outside of each separate sleeping area in the immediate vicinity of the bedrooms in dwelling units within which fuel-fired appliances are installed and in dwelling units that have attached garages. ( )

g. Add the following as section M1203.2: Where required in existing dwellings. Where work requiring a permit occurs in existing dwellings that have attached garages or in existing dwellings within which fuel-fired appliances exist, carbon monoxide alarms shall be provided in accordance with Subsection 006.01.f. of these rules. ( )

h. Add the following as section M1203.3: Alarm requirements. Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions. ( )

~~di.~~ Section M1401.3. Sizing requirements shall be as established by the authority having jurisdiction. (4-7-11)

~~ej.~~ Section G2417.4 (406.4). Change the last sentence to: Mechanical gauges used to measure test pressure shall have a range such that the highest end of the scale is not greater than two (2) times the test pressure nor lower than one and one-half (1.5) times the test pressure. (4-7-11)

~~fk.~~ Section G2417.4.1 (406.4.1). Test Pressure. Not less than twenty (20) psig (one hundred forty (140) kPa gauge) test pressure shall be required for systems with a maximum working pressure up to ten (10) inches water column. For systems with a maximum working pressure between ten (10) inches water column and ten (10) psig (seventy (70) kPa gauge), not less than sixty (60) psig (four hundred twenty (420) kPa gauge) test pressure shall be required. For systems over ten (10) psig (seventy (70) kPa gauge) working pressure, minimum test pressure shall be no less than six (6) times working pressure. (4-7-11)

~~gl.~~ Section G2417.4.2 (406.4.2). The test duration shall not be less than twenty (20) minutes. (4-7-11)

**02. Availability of the International Residential Code for One (1)- and Two (2)-Family Dwellings.**  
The 2009 Edition is available at the Division of Building Safety offices located at 1090 E. Watertower St., Suite 150 Meridian, Idaho 83642; 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814; and 2055 Garrett Way, Building 1, Suite 4, Pocatello, Idaho 83201. (4-7-11)

**007. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.**

The principal place of business of the Division of Building Safety, HVAC ~~Bureau~~ Program is located at 1090 E. Watertower Street, Suite 150, Meridian, Idaho. The office is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The mailing address is: Division of Building Safety, HVAC ~~Bureau~~ Program, 1090 E. Watertower Street, Suite 150, Meridian, Idaho 83642. The office telephone number is (208) 334-6180 and the facsimile number is (208) 855-0768. (~~4-11-06~~)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**012. DEFINITIONS.**

**01. Administrator.** The administrator of the Idaho Division of Building Safety. (3-16-04)

**02. Board.** The Idaho Heating, Ventilation, and Air Conditioning (HVAC) Board. (3-16-04)

~~03. Bureau.~~ ~~The Idaho Division of Building Safety, Heating, Ventilation, and Air Conditioning Bureau.~~ (~~3-16-04~~)

- 043.**     **Division.** The Idaho Division of Building Safety. (3-16-04)
- 054.**     **Additional Definitions.** Terms defined in Section 54-5003, Idaho Code, will have the same meaning when utilized in these rules. (3-16-04)
- 065.**     **Rules.** IDAPA 07.07.01, “Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems, Division of Building Safety.” (3-16-04)

# **IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION**

## **08.01.10 - IDAHO COLLEGE WORK STUDY PROGRAM**

**DOCKET NO. 08-0110-1201**

### **NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 33-105 and 33-4402, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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:

Proposed changes will remove redundant sections that are contained in Chapter 44, Title 33, Idaho Code, simplify the distribution formula used for allocation of funds to institutions, remove the requirement that the work experience be related to the student's "field of study", and add sections required by the Office of the Administrative Rules Coordinator.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 not conducted because the agency determined it was not feasible due to time constraints associated with the rule promulgation process.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Tracie Bent, Chief Planning and Policy Officer, at (208)332-1582 or [tracie.bent@osbe.idaho.gov](mailto:tracie.bent@osbe.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 31st day of August, 2012.

Tracie Bent  
Chief Planning and Policy Officer  
Office of the State Board of Education  
650 W State St.  
PO Box 83720  
Boise, ID 83720-0037  
(208)332-1582  
fax: (208)334-2632

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0110-1201

**000. LEGAL AUTHORITY.**

The following rules are made under authority of Sections 33-105, 33-107, and 33-4402, Idaho Code, to implement the provisions of Chapter 44, Title 33, Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title.** This rule shall be cited as IDAPA 08.01.10, "Idaho College Work Study Program." ( )

**02. Scope.** This rule establishes the administrative procedures necessary to implement a student financial and educational aid program as called for by Chapter 44, Title 33, Idaho Code. ( )

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations of this rule. ( )

**003. ADMINISTRATIVE APPEALS.**

Unless otherwise provided for in the Rules of the State Board of Education or in the State Board of Education Governing Policies and Procedures, all administrative hearings and appeals allowed by law shall be governed according to the provisions of the Idaho Administrative Procedure Act, Chapter 52, Title 67, Idaho Code, and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." ( )

**004. INCORPORATION BY REFERENCE.**

There are no documents incorporated by reference. ( )

**005. OFFICE INFORMATION.**

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

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

**03. Street Address.** The offices of the Board are located at 650 W. State Street, Boise, Idaho. ( )

**04. Telephone.** The telephone number of the Board is (208) 334-2270. ( )

**05. Facsimile.** The facsimile number of the Board is (208) 334-2632. ( )

**06. Electronic Address.** The electronic address of the Board of Education at [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

This rule is subject to the provisions of the Public Records Act, Title 9, Chapter 3, Idaho Code. ( )

**007. -- 099. (RESERVED)**

**(BREAK IN CONTINUITY OF SECTIONS)**

**101. INSTITUTIONAL PARTICIPATION.**

Eligible postsecondary institutions are defined by statute. In order to participate in the program during a specific fiscal year, eligible institutions shall: (7-1-93)

**01. Annual Application.** Submit to the Office of the State Board of Education an annual application on or before the November 1 preceding the beginning of the fiscal year. (7-1-93)

**02. Enrollment Form.** Submit to the Office of the State Board of Education a properly completed and accurate Student Enrollment Form (PSR-1) for the fall semester ~~preceding~~ **prior to** the **previous** fiscal year. The required PSR-1 shall be submitted ~~on or before the November 1 preceding the beginning of the fiscal year~~ **each February as directed by the Office of the State Board of Education.** (7-1-93)(    )

~~**03. Educational Need.** Eligible postsecondary institutions participating in the educational need, work experience portion of the work study program shall submit to the Office of the State Board of Education, on or before August 1 preceding the beginning of the academic year, requirements for determining educational need, in accordance with Section 33-4405, Idaho Code, and Section 8 of this chapter. (7-1-93)~~

**102. ALLOCATION OF FUNDS.**

Funds appropriated to the Office of the State Board of Education for the Idaho College Work Study Program shall be allocated to participating institutions based on enrollment data submitted by each institution on the Student Enrollment Form (PSR-1) for the fall semester ~~immediately preceding~~ **prior to** the **previous** fiscal year of participation. The allocation shall be based on the ~~number of full-time equivalent (FTE) students multiplied by a residency~~ **appropriation for that fiscal year multiplied by an enrollment** factor. The ~~residency~~ **enrollment** factor shall be calculated by dividing the headcount of ~~full-time~~ **resident degree-seeking** students ~~at the participating institutions~~ **by the total** headcount of ~~full-time~~ **resident degree-seeking** students ~~for all participating institutions.~~ **The adjusted number of FTE students for each institution divided by the adjusted total number of FTE students for all participating institutions shall determine the proportion of the appropriation for the Idaho College Work Study Program to be allocated to each institution.** (7-1-93)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**105. DISTRIBUTION OF FUNDS.**

Funds allocated to participating institutions for a specific fiscal year by the Office of the State Board of Education shall be distributed to the institution ~~no later than August 15 and January 15 of the fiscal year~~ **during the fall term for the academic year.** (7-1-93)(    )

**106. CARRYOVER FUNDS.**

Participating institutions may carry over up to ten percent (10%) of the work study program funds received in one fiscal year to the next fiscal year, provided however, that any carryover funds shall be used exclusively in the work study program. Any unexpended funds in excess of the ten percent (10%) provided herein shall be returned to ~~and~~ **redistributed by** the Office of the State Board of Education ~~to be reallocated to the work study account.~~ (7-1-93)(    )

~~**107. EDUCATIONAL NEED; WORK EXPERIENCE.**~~

~~**01. Purpose.** The purpose of the educational need portion of the work study program is to enable students, without regard to financial need, to gain valuable work and career work experience related to their field of study. (7-1-93)~~

~~**02. Determination of Educational Need.** Requirements for determining educational need shall be formulated by each participating institution, subject to review by the State Board of Education. In reviewing such requirements, the State Board of Education will consider the following minimum guidelines: (7-1-93)~~

~~**a.** The requirement that the work experience be related to the student's "field of study" shall mean the student's declared major or minor or, if a vocational student, a specific vocational program for which the student is seeking a degree, certificate, or license. "Field of study" may also include a specific course or academic or vocational project which complements the student's major, minor, or vocational program, provided the student~~

~~obtains a written statement from an advisor or the professor or instructor of the specific course or project that the work experience proposed is related to, and will complement the major, minor, or vocational programs which the student is pursuing.~~ (7-1-93)

~~b. The financial resources of the student, including but not limited to individual or family income, may not be considered in determining eligibility.~~ (7-1-93)

~~e. In addition to the above, participating institutions which are controlled by sectarian organizations are subject to the following constitutional and statutory restrictions:~~ (7-1-93)

~~i. No student may participate whose course of study is sectarian in nature or who is pursuing an educational program leading to a baccalaureate or other degree in theology or divinity.~~ (7-1-93)

~~ii. Students at such participating institutions may participate only in the off campus work experience portion of the program.~~ (7-1-93)

~~iii. Off campus employment may not be located at, or be performed on behalf of, a church, sectarian or religious organization, religious denomination, sect, or society, whether incorporated or unincorporated.~~ (7-1-93)

**1087. -- 999. (RESERVED)**

# **IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION**

## **08.01.11 - REGISTRATION OF POST-SECONDARY EDUCATIONAL INSTITUTIONS AND PROPRIETARY SCHOOLS**

**DOCKET NO. 08-0111-1201**

### **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, 33-2402, and 33-2403, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17th, 2012.

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:

Proposed changes would expand the accreditation organizations recognized by the Board of Education, amend the period for establishing the gross Idaho tuition for registration purposes to the tax reporting year rather than the State fiscal year, and require greater transparency in notification to potential students for those courses or courses of study that may require a clinical or internship component.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 4, 2012 Idaho Administrative Bulletin, [Volume 12-7, page 31](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Tracie Bent, Chief Planning and Policy Officer, at (208)332-1582 or [tracie.bent@osbe.idaho.gov](mailto:tracie.bent@osbe.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 31st day of August, 2012.

Tracie Bent  
Chief Planning and Policy Officer  
Office of the State Board of Education  
650 W State St.  
PO Box 83720  
Boise, ID 83720-0037  
(208)332-1582, fax: (208)334-2632

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0111-1201**

**100. RECOGNITION OF ACCREDITATION ORGANIZATIONS.**

For purposes of registration of post-secondary educational institutions, the Board recognizes the regional and national accreditation organizations that are recognized by and in good standing with *both* the United States Department of Education ~~and by the Council for Higher Education Accreditation~~, and which accredit entire colleges or universities, and which do not accredit only courses or courses of study (such as specialized accreditation organizations). Further, the Board may recognize other accreditation organizations on a case-by-case basis. A request for recognition of other accreditation organizations for purposes of registration should be made to the Board's Chief Academic Officer, who will review and evaluate the request with the input and advice of the Board's Committee on Academic Affairs and Programs (CAAP). The Board will make a final decision based on such evaluation and review. (3-29-12)( )

**101. -- 199. (RESERVED)**

**200. REGISTRATION OF POST-SECONDARY EDUCATIONAL INSTITUTIONS.**

**01. Delegation.** Section 33-2403, Idaho Code, provides that a post-secondary educational institution must hold a valid certificate of registration issued by the Board. The Board delegates authority to its Executive Director and the Office of the State Board of Education to administer the registration of post-secondary educational institution, in accordance with Title 33, Chapter 24, Idaho Code, and this rule. (3-29-12)

**02. Registration Requirement.** (4-9-09)

**a.** Unless exempted by statute or this rule, as provided herein, a post-secondary educational institution which maintains a presence within the state of Idaho, or that operates or purports to operate from a location within the state of Idaho, shall register and hold a valid certificate of registration issued by the Board. An institution shall not conduct, provide, offer, or sell a course or courses of study, or degree unless registered. (3-29-12)

**b.** Registration shall be for the period beginning on the date a certificate of registration is issued and continue through June 30 of the next succeeding year. A registered post-secondary educational institution must renew its certificate of registration annually, and renewal of registration is not automatic. (3-29-10)

**c.** Renewal of registration shall be for the period beginning on July 1 of any year, and continue through June 30 of the next succeeding year. (4-9-09)

**d.** A new or start-up entity that desires to operate as a postsecondary educational institution in Idaho but which is not yet accredited by an accreditation organization recognized by the Board must register and operate as a proprietary school until accreditation is obtained. A new or start-up entity that is accredited and authorized to operate in another state, and which desires to operate as a postsecondary educational institution in Idaho offering degrees for which specialized program accreditation is required, may be granted approval to operate subject to the successful attainment of such program accreditation within the regular program accreditation cycle required by the accreditor. (3-29-12)

**e.** There is no inherent or private right to grant degrees in Idaho. That authority belongs only to institutions properly authorized to operate in Idaho under these rules. (3-29-12)

**03. Idaho Presence.** (3-29-12)

**a.** An institution shall be deemed to have a presence in Idaho, or to be operating or purporting to be operating from a location within the state of Idaho, if it owns, rents, leases, or uses any office or other type of physical location in Idaho, including a mailing or shipping center, or if it represents in any way, such as on an electronic or Internet website, to have an Idaho street or mailing address, including a post office box in Idaho, for purposes of conducting, providing, offering or selling a course or courses of study or degrees. (3-29-12)

**b.** Idaho presence shall include medical/osteopathic education clinical instruction occurring in the



state of Idaho as part of a course of study leading to a degree pursuant to a formal arrangement or agreement between such clinic and an institution providing medical/osteopathic education instruction. (3-29-12)

**c.** Idaho presence shall not include: (3-29-12)

i. Distance or online education delivered by an institution located outside of the state of Idaho to students in this state when the institution does not otherwise have physical presence in Idaho, as provided in Subsection 200.03.a. of this rule; (3-29-12)

ii. Medical education instruction occurring in the state of Idaho by an institution pursuant to a medical education program funded by the state of Idaho; (3-29-12)

iii. Internship or cooperative training programs occurring in the state of Idaho where students are employed by or provide services to a business or company in this state and receive course credit from an institution related to such activities; or (3-29-12)

iv. Activities limited to the recruiting or interviewing of applicants or potential students in the state of Idaho, whether conducted by a compensated employee, agent, or representative of an institution, or by volunteer alumnus of an institution, even if such individual is physically located in this state. (3-29-12)

**04. Institutions Exempt from Registration.** (4-9-09)

**a.** Idaho public post-secondary educational institutions. Section 33-2402(1), Idaho Code, provides that a public institution supported primarily by taxation from either the state of Idaho or a local source in Idaho shall not be required to register. (4-9-09)

**b.** Certain Idaho private, nonprofit, post-secondary educational institutions. A private, nonprofit, post-secondary educational institution that is already established and operational as of the date when this rule first went into effect (Brigham Young University - Idaho, College of Idaho, Northwest Nazarene University, New Saint Andrews College, Boise Bible College), and located within the state of Idaho, and that is accredited by an accreditation organization recognized by the Board, as set forth in Section 100 of this rule, shall not be required to register. A private, nonprofit, institution is located within the state of Idaho only if it has been lawfully organized in the state of Idaho and its principal place of business is located within the state of Idaho. An institution exempt under this subsection may voluntarily register by following the procedure for registration provided herein. (3-29-12)

**c.** Idaho religious institutions. A religious institution located within the state of Idaho that is owned, controlled, operated, and maintained by a religious organization lawfully operating as a nonprofit religious corporation and that grants only religious degrees shall not be required to register. (3-29-12)

**05. Institutions That Must Register.** Unless exempt under Subsection 200.04 of this rule, any entity that desires to operate as a postsecondary educational institution in Idaho must register as provided herein. (3-29-12)

**06. Application.** A post-secondary educational institution that is required to register under this rule must submit to the Board office an application for registration (either an application for initial registration or renewal of registration, as applicable), on the form provided by the Board office. The application must include a list of each course, course of study, and degree the applicant institution intends to conduct, provide, offer, or sell in Idaho during the registration year. (3-29-10)

**07. Registration Fees.** The Board shall assess an annual registration fee for initial registration or renewal of registration of a post-secondary educational institution. The registration fee must accompany the application for registration, and shall be in the amount of one-half of one percent (.5%) of the gross Idaho tuition revenue of the institution during the previous ~~registration tax reporting~~ year (Jan 1 - Dec 31), but not less than one hundred dollars (\$100) and not to exceed five thousand dollars (\$5,000). The institution must provide financial documentation to substantiate the amount of revenue reported. Registration fees are nonrefundable. ~~(3-29-12)~~( )

**08. Deadline for Registration.** An initial application for registration may be submitted to the Board at anytime. An institution should expect the Board's review process for an initial registration to take approximately

three (3) to five (5) months. An application for renewal of registration must be submitted to the Board on or before the first business day of May that precedes the registration year. The renewal will be processed within thirty (30) days. Institutions that do not adhere to this schedule and whose renewals are not processed by July 1st must cease all active operations until approval of registration is received. (3-29-12)

**09. Information Required.** (3-29-12)

**a.** An application must include all the information requested on the application form, as well as the following information: (3-29-12)

i. Copy of most recent accreditation letter showing the period of approval; (4-7-11)

ii. Current list of chief officers - e.g. president, board chair, chief academic officer, chief fiscal officer; (4-9-09)

iii. Enrollment data for current and past two (2) years; (4-9-09)

iv. Copy of annual audited financial statement; (4-9-09)

v. Any additional information that the Board may request. (4-9-09)

**b.** The Board may, in connection with a renewal of registration, request that an institution only submit information that documents changes from the previous year, provided that the institution certifies that all information and/or documentation submitted in a previous registration year remains current. The annual registration fee, described in Subsection 200.07 of this rule, shall remain applicable. (3-29-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**300. REGISTRATION OF PROPRIETARY SCHOOLS.**

**01. Delegation.** Section 33-2403, Idaho Code, provides that a proprietary school must hold a valid certificate of registration issued by the Board. The Board delegates authority to its Executive Director and the Office of the State Board of Education to administer the registration of proprietary schools, in accordance with Title 33, Chapter 24, Idaho Code, and this rule. (3-29-12)

**02. Registration Requirement.** (4-9-09)

**a.** Unless exempted by statute or this rule, as provided herein, a proprietary school which maintains a presence within the state of Idaho, or which operates or purports to operate from a location within the state of Idaho, shall register annually and hold a valid certificate of registration issued by the Board. A school shall not conduct, provide, offer, or sell a course or courses of study unless registered. A school shall not solicit students for or on behalf of such school, or advertise in this state, unless registered. (3-29-10)

**b.** Registration shall be for the period beginning July 1 of any year and continue through June 30 of the next succeeding year. For a school that has not previously registered with the Board, registration shall be for the period beginning on the date of issuance of a certificate of registration and continue through June 30 of the next succeeding year. A registered proprietary school must renew its certificate of registration annually and renewal of registration is not automatic. (3-29-12)

**c.** Renewal of registration shall be for the period beginning on July 1 of any year, and continue through June 30 of the next succeeding year. (4-9-09)

**03. Idaho Presence.** (3-29-12)

**a.** A school shall be deemed to have a presence in Idaho, or to be operating or purporting to be operating from a location within the state of Idaho, or if it owns, rents, leases, or uses any office or other type of physical location in Idaho, including a mailing or shipping center, or if it represents in any way, such as on an electronic or Internet website, to have an Idaho street or mailing address, including a post office box in Idaho, for purposes of conducting, providing, offering or selling a course or courses of study or degrees. (3-29-12)

**b.** Idaho presence shall not include: (3-29-12)

**i.** Distance or online education delivered by an institution located outside of the state of Idaho to students in this state when the institution does not otherwise have physical presence in Idaho, as provided in Subsection 300.03.a. of this rule; (3-29-12)

**ii.** Internship or cooperative training programs occurring in the state of Idaho where students are employed by or provide services to a business or company in this state and receive course credit from an institution related to such activities; or (3-29-12)

**iii.** Activities limited to the recruiting or interviewing of applicants or potential students in the state of Idaho, whether conducted by a compensated employee, agent, or representative of an institution, or by volunteer alumnus of an institution, even if such individual is physically located in this state. (3-29-12)

**04. Exemptions from Registration.** The following individuals or entities are specifically exempt from the registration requirements of this rule: (4-9-09)

**a.** An individual or entity that offers instruction or training solely avocational or recreational in nature, as determined by the Board. (3-29-12)

**b.** An individual or entity that offers courses recognized by the Board which comply in whole or in part with the compulsory education law. (4-9-09)

**c.** An individual or entity that offers a course or courses of study sponsored by an employer for the training and preparation of its own employees, and for which no tuition fee is charged to the student. (4-9-09)

**d.** An individual or entity which is otherwise regulated, licensed, or registered with another state agency pursuant to Title 54, Idaho Code. (4-9-09)

**e.** An individual or entity that offers intensive review courses designed to prepare students for certified public accountancy tests, public accountancy tests, law school aptitude tests, bar examinations or medical college admissions tests, or similar instruction for test preparation. (4-9-09)

**f.** An individual or entity offering only workshops or seminars lasting no longer than three (3) calendar days and offered no more than four (4) times per year. (3-29-12)

**g.** A parochial or denominational institution providing instruction or training relating solely to religion and for which degrees are not granted. (4-9-09)

**h.** An individual or entity that offers post-secondary credit through a consortium of public and private colleges and universities under the auspices of the Western Governors University. (3-29-12)

**i.** An individual or entity that offers flight instruction and that accepts payment for services for such training on a per-flight basis after the training occurs, or that accepts advance payment or a deposit for such training in a de minimus amount equal to or less than fifteen (15) percent of the total course or program cost. (3-29-12)

**05. Application.** A proprietary school that is required to register under this rule must submit to the Board office an application for registration (either an application for initial registration, or renewal of registration, as applicable), on a form provided by the Board office. The application must include a list of each course or courses of study the applicant school intends to conduct, provide, offer or sell in Idaho during the registration year. (3-29-10)

**06. Registration Fees.** The Board shall assess an annual registration fee for initial registration or renewal of registration. The registration fee must accompany the application for registration, and shall be one-half of one percent (.5%) of the gross Idaho tuition revenue of the school during the previous registration tax reporting year (Jan 1 - Dec 31), but not less than one hundred dollars (\$100) and not to exceed five thousand dollars (\$5,000). The school shall provide documentation to substantiate the amount of revenue reported. Registration fees are nonrefundable. (3-29-12)( )

**07. Deadline for Registration.** An initial application for registration may be submitted to the Board at anytime. A school should expect the Board review process for an initial registration to take approximately three (3) to five (5) months. An application for renewal of registration must be submitted to the Board on or before the first business day of May that precedes the registration year. The renewal will be processed within thirty (30) days. Institutions that do not adhere to this schedule and whose renewals are not processed by July 1st must cease all active operations until approval of registration is received. (3-29-12)

**08. Information Required.** Such application must include all the information requested on the application form. In addition, a school must attest by signature of the primary official on the application form that it is in compliance with Standards I through V set forth in Section 301 of this rule and must provide verification of compliance with Standards I through V set forth in Section 301 of this rule upon request. The Board may, in connection with a renewal of registration, request that a school only submit information that documents changes from the previous year, provided that the school certifies that all information and/or documentation submitted in a previous registration year remains current. The annual registration fee, described in Subsection 300.06 of this rule, shall remain applicable. (3-29-12)

**301. APPROVAL STANDARDS FOR REGISTRATION OF PROPRIETARY SCHOOLS.**

The Board and its designee accepts the responsibility for setting and maintaining approval standards for proprietary schools that plan to offer courses or a set of related courses in or from Idaho in order to protect consumers and to ensure quality educational programs are provided throughout the state. A school must meet all of the standards prior to issuance of a certificate of registration and the school must provide required evidence to document compliance with the standards as identified in the application form. A certificate of registration may be denied if all of the standards are not met. (4-9-09)

**01. Standard I - Legal Status and Administrative Structure.** The school must be in compliance with all local, state and federal laws, administrative rules, and other regulations applicable to proprietary schools. (4-9-09)

**a.** The school must have a clearly stated educational purpose that is consistent with the courses or a set of related courses under consideration for approval. (4-7-11)

**b.** The ownership of the school, its agents, and all school officials must be identified by name and title. (4-9-09)

**c.** Each owner, agent, instructor and/or school official must be appropriately qualified by the trade board (as applicable) to ensure courses are of high quality and the rights of students are protected. (3-29-12)

**d.** Written policies must be established to govern admissions and re-admission of dismissed students, hiring procedures, and working conditions; evaluation/assessment of all employees and instructional offerings; student and instructor rights and responsibilities; grievance procedures; approval of the curriculum and other academic procedures to ensure the quality of educational offerings. (4-7-11)

**e.** Procedures for assessing/evaluating the effectiveness of instruction must be established. Evaluation and assessment results must be used to improve courses or courses of study. (4-9-09)

**f.** All advertising, pamphlets, and other literature used to solicit students and all contract forms must accurately represent the purpose of the school, its courses or courses of study, anticipated job opportunities, and other relevant information to assist students in making an informed decision to enroll. Schools offering courses or courses of study which require clinical, practicum or internship components must provide students in writing information regarding the number of clinical, practicum or internship positions available and the location of said positions. The school must provide to each prospective student, newly-enrolled student, and returning student complete and clearly

presented information indicating the school's current completion and job placement rate. (3-29-12)( )

**02. Standard II - Courses or Courses of Study.** Instruction must be the primary focus of the school. All courses or courses of study must prepare students to enter employment upon completion of the program or prepare them for self-employment. (3-29-12)

**a.** The requirements for each course or courses of study must be defined clearly including applicable completion requirements or other requirements such as practicums and clinicals. Courses or courses of study will follow applicable trade board training curriculum standards or be designed using effective learning strategies for students, identifying and organizing all instructional materials and specialized facilities, identifying instructional assessment methods, and evaluating the effectiveness of the course offerings. (3-29-12)

**b.** Written course descriptions must be developed for all courses or courses of study. Written course descriptions must be provided to instructors. Instructors are expected to follow course descriptions. A syllabus must be developed for each course and distributed to students at the beginning of the course. (3-29-12)

**c.** The school must assure that a course or courses of study will be offered with sufficient frequency to enable students to complete courses or courses of study within the minimum time for completion. (4-9-09)

**d.** The school must clearly state the cost of each course or courses of study and identify the payment schedule. This information, and the refund policy, must be given to students in writing. (3-29-12)

**03. Standard III - Student Support Services.** The school must have clearly defined written policies that are readily available to students. Policies must address students rights and responsibilities, grievance procedures, and define what services are available to support students. (3-29-12)

**a.** The admission of students must be determined through an orderly process established in a written policy using published criteria which must be uniformly applied. Admissions decisions must take into account the capacity of the student to grasp and complete the instructional training program and the ability of the school to handle the unique needs of the students it accepts. (3-29-12)

**b.** There must be a clearly defined policy to re-evaluate students dismissed from the school and, if appropriate, to readmit them. (3-29-12)

**c.** The school must establish and adhere to a clear and fair policy regarding due process in disciplinary matters for all students, given to each student upon enrollment in the school. The school must provide the name and contact information for the individual who is responsible for dealing with student grievances and other complaints and for handling due process procedures. (3-29-12)

**d.** Prior to enrollment, all prospective students must receive the following information in writing: (3-29-12)

i. Information describing the purpose, length, and objectives of the courses or courses of study; (4-9-09)

ii. Completion requirements for the courses or courses of study; (4-9-09)

iii. The schedule of tuition, fees, and all other charges and all expenses necessary for completion of the courses or courses of study; (4-9-09)

iv. Cancellation and refund policies; (4-9-09)

v. An explanation of satisfactory progress, including an explanation of the grading/assessment system; (4-9-09)

vi. The calendar of study including registration dates, beginning and ending dates for all courses, and holidays; (4-9-09)

- vii. A complete list of instructors and their qualifications; (4-9-09)
- viii. A listing of available student services; and (4-9-09)
- e. Accurate and secure records must be kept for all aspects of the student record including, at minimum, admissions information, and the courses each student completed. (4-9-09)
- 04. Standard IV - Faculty/Instructor Qualifications and Compensation.** (3-29-12)
  - a. Instructor qualifications (training and experience) must be recorded and available to students. (3-29-12)
  - b. There must be a sufficient number of full-time instructors to maintain the continuity and stability of courses. (4-9-09)
  - c. The ratio of instructors to students in each course must be sufficient to assure effective instruction. (4-9-09)
  - d. Commissions may not be used for any portion of the faculty compensation. (4-9-09)
  - e. Procedures for evaluating instructors must be established. Provisions for student evaluation are recommended. (4-9-09)
- 05. Standard V - Resources, Finance, Facilities, and Instructional Resources.** (4-9-09)
  - a. Adequate financial resources must be provided to accomplish instructional objectives and to effectively support the instructional program, including classroom and training facilities, instructional materials, supplies and equipment, instructors, staff, library, and the physical and instructional technology infrastructure. (3-29-12)
  - b. The school must have sufficient instructional resource materials so that, together with tuition and fees, it is able to complete its educational obligations to currently enrolled students. If the school is unable to fulfill its obligations to students, the school must make arrangements for a comparable teach-out opportunity with another proprietary school or refund one hundred (100) percent of prepaid tuition. (3-29-12)
  - c. School financial/business records and reports must be kept separate and distinct from those of any affiliated or sponsoring person or entity. Financial records and reports at a school shall be kept in accordance recognized financial accounting methods. (3-29-12)
  - d. The school must have adequate instructional resource materials available to students, either on site or through electronic means. These materials must be housed in a designated area and be available for students and instructors with sufficient regularity and at appropriate hours to support achievement of course objectives or to promote effective teaching. (4-9-09)
  - e. If the school relies on other schools or entities to provide library resources or instructional resources, the school must demonstrate how these arrangements effectively meet the needs of students and faculty. These arrangements must be documented through written agreements. Student and faculty use must be documented and frequently evaluated to ensure quality services are being provided. (4-9-09)

**IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION**

**08.01.14 - IDAHO RURAL PHYSICIAN INCENTIVE PROGRAM**

**DOCKET NO. 08-0114-1201 (CHAPTER REPEAL)**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is August 16, 2012.

**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 33-105, and Chapter 37 Title 33, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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: Changes to Chapter 37, Title 33 during the 2012 legislative session have made this rule obsolete and this section is being repealed in its entirety.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1) (b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: To come into compliance with amendments made to Chapter 37, Title 33, Idaho Code made during the 2012 legislative session.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 rule is to come into compliance with changes made to statute during the 2012 legislative session.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Tracie Bent, Chief Planning and Policy Officer, at (208)332-1582 or [tracie.bent@osbe.idaho.gov](mailto:tracie.bent@osbe.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24th, 2012.

DATED this 31st day of August, 2012.

Tracie Bent, Chief Planning and Policy Officer  
Office of the State Board of Education  
650 W State St., PO Box 83720

Boise, ID 83720-0037  
Phone: (208)332-1582  
Fax: (208)334-2632

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**IDAPA 08.01.14 IS BEING REPEALED IN ITS ENTIRETY**

# **IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION**

## **08.02.02 - RULES GOVERNING UNIFORMITY**

**DOCKET NO. 08-0202-1203**

### **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 33-1511(2), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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:

#### **Standards Revisions:**

The Professional Standards Commission follows a Strategic Plan of annually reviewing twenty percent (20%) of the Idaho Standards for Initial Certification of Professional School Personnel. In spring 2012 the Core Teacher Standards, Bilingual/ English as a New Language Teacher standards, Foreign Language Teacher standards and Professional Technical Education Teacher standards were reviewed by committees of content experts. The Professional Technical Education Standards review also included the following enhancement standards: Agriculture Science and Technology, Business Technology Education, Family and Consumer Sciences, Marketing Technology Education, and Technology Education. All standards and endorsements were revised to better align with national standards and best practices; then presented to the Professional Standards Commission for review. The Professional Standards Commission has recommended for approval the committees' proposed revisions.

#### **Teacher Leader Standards Adoption:**

Students Come First is Idaho's education reform which focusses on fostering great teachers and leaders. Because the quality of the teacher in the classroom is the most important factor in a student's academic success, the Idaho State Department of Education is focusing on building great teachers and leaders through certification requirements as well as pre-service training, professional development, statewide pay-for-performance, and improved performance evaluations for a systemic approach to educator effectiveness.

As part of this effort, the Professional Standards Commission has recommended the adoption Teacher Leader Standards for Idaho. The recommended standards are grounded in the national work of the Teacher Leadership Exploratory Consortium. The Consortium is made up of a variety of education stakeholders, including union representatives, teachers, school administrators, policy organizations such as Council of Chief State School Officers (CCSSO), and leaders in higher education.

**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: N/A

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The excessive size of the Idaho Standards for Initial Certification of Professional School Personnel prohibits its inclusion, in its entirety, in Idaho Code.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Christina Linder by email at [cplinder@sde.idaho.gov](mailto:cplinder@sde.idaho.gov) or



by phone at 208-332-6886 or at the address listed below.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 16th day of August, 2012.

Tom Luna  
Idaho Superintendent of Public Instruction  
State Department of Education  
650 West State Street  
P.O. Box 83720  
Boise, Idaho 83720-0027  
telephone: 208-332-6800; fax: 208-334-2228

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0202-1203**

**004. INCORPORATION BY REFERENCE.**

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

**01. Idaho Standards for the Initial Certification of Professional School Personnel as approved on ~~November 17, 2010~~ August 16, 2012.** Copies of this document can be found on the Office of the State Board of Education website at [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). (4-7-11)( )

**02. Standards for Idaho School Buses and Operations as approved on June 23, 2011.** 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/site/transportation/library.htm>. (3-29-12)

**03. Operating Procedures for Idaho Public Driver Education Programs as approved on November 17, 2010.** The Operating Procedures for Idaho Public Driver Education 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/site/driver\\_edu/forms\\_curriculum.htm](http://www.sde.idaho.gov/site/driver_edu/forms_curriculum.htm). (4-7-11)

# **IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION**

## **08.02.02 - RULES GOVERNING UNIFORMITY**

**DOCKET NO. 08-0202-1204**

### **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 33-1511(2), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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:

#### **08.02.02.016, Idaho Educator Credential Renewal Requirement, Subsection 016.03, Comprehensive Literacy.**

This new subsection is necessary to remedy an oversight regarding renewal requirements for certificate holders. The Idaho Comprehensive Literacy requirements were amended and moved from statute into Administrative Rule in 2011. While interim and initial certification requirements were addressed, no specific language was promulgated to require the Idaho Comprehensive Literacy Course for those renewing Idaho certificates.

#### **08.02.02.021, Endorsements**

This rule clarification is necessary in order to clearly stipulate that the Idaho Standards for Initial Certification of Professional School Personnel are the specific standards by which Idaho institutions must align their educator preparation programs in order to gain approval for teacher certification.

#### **08.02.02.022, Endorsements A - D, Subsections 022.01, Agriculture Science and Technology (6-12); 022.04, Bilingual Education (K-12); and 022.06, Business Technology Education (6-12).**

#### **08.02.02.023, Endorsements E - L, Subsections 023.04, English as a New Language (ENL) (K-12); 023.05, Family and Consumer Sciences (6-12); and 023.06, Foreign Language (6-12 or K-12).**

#### **08.02.02.024, Endorsements M - Z, Subsections 024.01, Marketing Technology Education (6-12); 024.14, Technology Education (6-12); and 024.15, World Language (6-12 or K-12).**

The Professional Standards Commission follows a Strategic Plan of annually reviewing twenty percent (20%) of the Idaho Standards for Initial Certification of Professional School Personnel. In spring 2012 the Core Teacher Standards, Bilingual/English as a New Language Teacher standards, Foreign Language Teacher standards and Professional Technical Education Teacher standards were reviewed by committees of content experts. The Professional Technical Education Standards review also included the following enhancement standards: Agriculture Science and Technology, Business Technology Education, Family and Consumer Sciences, Marketing Technology Education, and Technology Education. All standards and endorsements were revised to better align with national standards and best practices, then presented to the Professional Standards Commission for consideration. The Professional Standards Commission has recommended approval of all of the committee's proposed revisions including renaming the Foreign Language standards and endorsement to World Language.

#### **08.02.02.029, Consulting Teacher Endorsement, Subsections 029.01 and 029.02:**

This rule revision is in response to two primary areas of deficit within the existing Consulting Teacher Endorsements.

Consulting teachers are teacher leaders who facilitate the design and implementation of sustained, intensive, and job-embedded professional learning for other teachers based on identified student and teacher needs.

As Idaho continues to recognize the need for teacher leaders, it is necessary to standardize content competencies.

Amendment to the rule promotes consistency and rigor to more closely align with current Idaho standards and national best practices.

Teachers in these positions can support and inform school leaders, creating a culture of success that can reverberate across their districts and beyond. Working with their colleagues, teacher leaders can implement strategies that improve student learning. Research shows that collective leadership has a stronger influence on student achievement than individual leadership. The proposed teacher leader standards seek to generate collective leadership by fostering professional discussion about best practices and advancing new roles for teachers to serve.

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

There is no imposed or increased fee associated with these changes.

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

The Professional Standards Commission, out of a dedicated fund, incurred the expense of the revisions process and negotiated rulemaking for these renewal and endorsement requirements.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because: N/A

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Christina Linder by email at [cplinder@sde.idaho.gov](mailto:cplinder@sde.idaho.gov), or by phone at 208-332-6886, or at the address listed below.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 16th day of August, 2012.

Tom Luna  
Idaho Superintendent of Public Instruction  
State Department of Education  
650 West State Street  
P.O. Box 83720  
Boise, Idaho 83720-0027  
telephone: 208-332-6800; fax: 208-334-2228

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0202-1204**

**016. IDAHO EDUCATOR CREDENTIAL.**

The State Board of Education authorizes the State Department of Education to issue certificates and endorsements to those individuals meeting the specific requirements for each area provided herein. (Section 33-1201, Idaho Code)  
(3-16-04)

**01. Renewal Requirement - Mathematics In-Service Program.** In order to recertify, the state approved mathematics instruction course titled "Mathematical Thinking for Instruction" shall be required. The

“Mathematical Thinking for Instruction” course consists of three (3) credits (or forty-five (45) contact hours of in-service training). Teachers and administrators shall take one (1) of the three (3) courses developed that each teacher deems to be most closely aligned with their current assignment prior to September 1, 2014. Any teacher or administrator successfully completing said course shall be deemed to have met the requirement of Subsection 060.03.c. of this rule, regardless of whether such course is part of any official transcript. Successful completion of state approved mathematics instruction course shall be a one-time requirement for renewal of certification for those currently employed in an Idaho school district and shall be included within current requirements for continuing education for renewal. The following individuals listed in Subsection 016.01.a. through 016.01.e. shall successfully complete the “Mathematical Thinking for Instruction” course in order to recertify: (4-7-11)

- a. Each teacher holding an Early Childhood/Early Childhood Special Education Blended Certificate (Birth - Grade 3) who is employed in an elementary classroom (multi-subject classroom, K-8); (3-29-10)
- b. Each teacher holding a Standard Elementary Certificate (K-8); (3-29-10)
- c. Each teacher holding a Standard Secondary Certificate (6-12) teaching in a math content classroom (grade six (6) through grade twelve (12)) including Title I classrooms; (3-29-10)
- d. Each teacher holding a Standard Exceptional Child Certificate (K-12); and (3-29-10)
- e. Each school administrator holding an Administrator Certificate (Pre K-12). (3-29-10)

**02. Out-of-State Applicants.** Out-of-state applicants shall take the state approved mathematics instruction course titled “Mathematical Thinking for Instruction” as a certification requirement. The “Mathematical Thinking for Instruction” course consists of three (3) credits (or forty-five (45) contact hours of in-service training). (3-29-10)

**03. Renewal Requirement - Comprehensive Literacy.** Completion of the Idaho Comprehensive Literacy Course or passing the Idaho Comprehensive Literacy Assessment is required for renewal of an Idaho professional education credential for anyone who holds a Standard Elementary or Standard Exceptional Child Certificate, regardless of their employment status at the time of renewal. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**021. ENDORSEMENTS.**

Holders of a Secondary Certificate or a Standard Elementary Certificate, Exceptional Child Certificate, Standard Occupational Specialist Certificate, and Advanced Occupational Specialist Certificate may be granted endorsements in subject areas as provided herein. Idaho preparation programs shall prepare candidates for endorsements in accordance with the Idaho Standards for Initial Certification of Professional School Personnel. An official statement of competency in a teaching area or field is acceptable in lieu of courses for a teaching major or minor if such statements originate in the department or division of the accredited college or university in which the competency is established and are approved by the director of teacher education of the recommending college or university. To add an endorsement to an existing credential, an individual shall complete the credit hour requirements as provided herein and shall also meet or exceed the state qualifying score on appropriate, state approved content, pedagogy and performance assessments. When converting semester credit hours to quarter credit hours, two (2) semester credit hours is equal to three (3) quarter credit hours. (~~3-29-12~~)( )

**022. ENDORSEMENTS A - D.**

**01. Agriculture Science and Technology (6-12).** (3-16-04)

a. Forty-five (45) semester credit hours including standards based course work in each of the following areas: agriculture education; agriculture mechanics; agriculture business management; soil science; animal science; and plant science. (~~3-16-04~~)( )

b. Occupational teacher preparation coursework that relates to the appropriate area(s) as provided in Sections 034 through 038. ~~(3-16-04)~~(\_\_\_\_)

**02. American Government /Political Science (6-12).** Twenty (20) semester credit hours to include: a minimum of six (6) semester credit hours in American Government, six (6) semester credit hours in U.S. History Survey, and a minimum of three (3) semester credit hours in Comparative Government. Remaining course work must be selected from Political Science. Course work may include three (3) semester credit hours in World History Survey. (4-11-06)

**03. Art (K-12 or 6-12).** Twenty (20) semester credit hours leading toward competency as defined by Idaho Standards for Visual Arts Teachers in the area of Art to include a minimum of nine (9) semester credit hours in: Foundation Art and Design. Additional course work must include at least two (2) Studio Areas and Secondary Arts Methods. To obtain an Art (K-12) endorsement, applicants holding a Secondary Certificate must complete an elementary methods course. (4-7-11)

**04. Bilingual Education (K-12).** Twenty (20) to forty-five (45) semester credit hours leading toward competency as defined by Idaho Standards for Bilingual Education Teachers to include ~~six (6)~~ all of the following: at least nine (9) upper division semester credits\* hours in one (1) Modern Language\* other than English, including writing and literature, and advanced proficiency according to the American Council on the Teaching of Foreign Languages (ACTFL) guidelines: cultural diversity; three (3) semester credit hours in cross-cultural or multi-cultural course work; three (3) semester credit hours in ENL/Bilingual Methods; three (3) semester credit hours in Linguistics; three (3) semester credit hours in second language acquisition theory and practice; Foundations of ENL/Bilingual Education, Federal and State Law, Theory; Testing/identification of Limited English Proficient Students; one (+) at least two (2) semester credit hours in Bilingual Practicum; and one (+) three (3) semester credit hours in a Bilingual Field Experience Education related elective (ex: linguistics, critical pedagogy, parent involvement). ~~(3-30-07)~~(\_\_\_\_)

**05. Biological Science (6-12).** Twenty (20) semester credit hours to include at least six (6) semester credit hours of course work in each of the following areas: Botany and Zoology. (3-16-04)

**06. Business Technology Education (6-12).** (3-16-04)

a. Twenty (20) to forty-five (45) semester credit hours to include standards based course work in each of the following areas: ~~Intermediate or Advanced Keyboarding; Accounting; and Business/Office Procedures computer and technical applications in business; economics; methods of teaching business education; Professional-Technical Student Organization (PTSO) leadership; business communication/writing; and office procedures.~~ Additional competencies may be satisfied through the following: entrepreneurship; finance; marketing; business law; and/or career guidance. ~~(3-16-04)~~(\_\_\_\_)

b. Occupational teacher preparation that relates to the appropriate area(s) as provided in Sections 034 through 038. ~~(3-16-04)~~(\_\_\_\_)

**07. Chemistry (6-12).** Twenty (20) semester credit hours in the area of Chemistry. (3-16-04)

**08. Communication (6-12).** Follow one (1) of the following options: (3-16-04)

a. Option I: Twenty (20) semester credit hours to include Methods of Teaching Speech/Communications plus course work in at least four (4) of the following areas: Interpersonal Communication/Human Relations; Argumentation/Personal Persuasion; Group Communications; Nonverbal Communication; Public Speaking; and Drama/Theater Arts. (3-16-04)

b. Option II: Possess an English endorsement plus at least twelve (12) semester credit hours distributed among the following: Interpersonal Communication/Human Relations, Public Speaking, and Methods of Teaching Speech/Communication. (3-16-04)

**10. Drama (6-12).** Twenty (20) semester credit hours leading toward competency as defined by Idaho

Standards for Drama Teachers, including a minimum of sixteen (16) semester credit hours in Drama or Theater Arts, including course work in each of the following: Acting, Directing, and Technical Stage Production, and four (4) semester credit hours in Communications. To obtain a Drama (6-12) endorsement, applicants must complete a comprehensive methods course including the pedagogy of acting, directing and technical theatre. (4-7-11)

**11. Driver Education (6-12).** Two (2) semester credit hours in Basic Driver Education for Teachers and two (2) semester credit hours in any of the following: Advanced Driver Education; Driver Simulation Education; Traffic Engineering; General Safety Education; or Highway Transportation. Additionally, an individual must have three (3) years of satisfactory driving experience immediately prior to endorsement as verified by the Motor Vehicle Division of the State Department of Transportation. (3-16-04)

**023. ENDORSEMENTS E - L.**

**01. Earth Science (6-12).** Twenty (20) semester credit hours including course work in each of the following: Earth Science, Astronomy, and Geology. (4-11-06)

**02. Economics (6-12).** Twenty (20) semester credit hours to include a minimum of three (3) semester credit hours of micro-economics, a minimum of three (3) semester credit hours of macro-economics, and a minimum of six (6) semester credit hours of Personal Finance/Consumer Economics/Economics Methods. Remaining course work may be selected from economics and finance course work in one (1) or more of the following areas: Agriculture Science and Technology, Business Education, Economics, Family and Consumer Science, or Marketing Education. (4-11-06)

**03. English (6-12).** Twenty (20) semester credit hours, including three (3) semester credit hours in Linguistics/Grammar, three (3) semester credit hours in American Literature, three (3) semester credit hours in English Literature, six (6) semester credit hours in Advanced Composition, excluding the introductory sequence designed to meet general education requirements. Remaining credits must be completed in the English Department, and must include some course work in Writing Methods for Teachers of Secondary Students. (3-16-04)

**04. English as a New Language (ENL) (K-12).** Twenty (20) ~~to forty-five (45)~~ semester credit hours ~~leading toward competency as defined by Idaho Standards for ENL Teachers~~ to include all of the following: at least four (4) semester credit hours in a modern language other than English; ~~three (3) semester credit hours in~~ Cultural Diversity; ~~three (3) semester credit hours in~~ ENL Methods; ~~three (3) semester credits in~~ Linguistics; ~~three (3) semester credit hours in~~ second language acquisition theory and practice; Foundations of ENL/Bilingual Education, Federal and State Law, ~~Theory~~, Testing/Identification of Limited English Proficient Students; and at least one (1) semester credit in ENL Practicum or Field Experience; ~~and three (3) semester credit hours in an ENL related elective.~~ ~~(3-29-12)( )~~

**05. Family and Consumer Sciences (6-12).** ~~(3-16-04)( )~~

**a.** Thirty (30) ~~to forty-five (45)~~ semester credit hours to include standards based coursework in each of the following areas: Child/Human Development; Human/Family Relations; Directed Laboratory Experience in Childcare; ~~Clothing Apparel~~ and Textiles, Cultural Dress, Fashion Merchandising, or Design; Nutrition; Food Preparation, Food Production, or Culinary Arts; Housing, Interior Design, Home Management, or Equipment; Consumer Economics or Family Resource Management; Introduction to Family Consumer Sciences; Professional-Technical Student Organization (PTSO) leadership; and Integration of Family Consumer Sciences or Family Consumer Science Methods. ~~(3-16-04)( )~~

**b.** Occupational ~~T~~eacher ~~P~~reparation that relates to the appropriate area(s) as provided in Sections 034 through 038. ~~(3-16-04)( )~~

~~**06. Foreign Language (6-12 or K-12).** Twenty (20) semester credit hours in a specific foreign language including course work in two (2) or more of the following areas: Grammar, Conversation, Composition, Culture, and Literature; and course work in Foreign Language Methods. To obtain an endorsement in a specific foreign language (K-12), applicants holding a Secondary Certificate must complete an elementary methods course. (4-11-06)~~

**076. Geography (6-12).** Twenty (20) semester credit hours including course work in Cultural Geography and Physical Geography, and a maximum of six (6) semester credit hours in World History Survey. Remaining semester credit hours must be selected from Geography. (4-11-06)

**087. Geology (6-12).** Twenty (20) semester credit hours in the area of Geology. (3-16-04)

**098. Gifted and Talented (K-12).** Twenty (20) semester credit hours, to include a minimum of three (3) semester credits hours in each of the following: Foundations of Gifted and Talented Education; Creative/Critical Thinking Skills for Gifted and Talented Students; Social and Emotional Needs of Gifted and Talented Students; Curriculum and Instruction for Gifted and Talented Students; and Practicum and Program Design for Gifted and Talented Education. Remaining course work must be in the area of gifted education. (5-8-09)

**409. Health (6-12 or K-12).** Twenty (20) semester credit hours to include course work in Organization/Administration/Planning of a School Health Program; Health and Wellness; Secondary Methods of Teaching Health; Elementary methods of Teaching Health; Mental/Emotional Health; Nutrition; Human Sexuality; Substance Use and Abuse. Remaining semester credits must be in health-related course work. (4-7-11)

**140. History (6-12).** Twenty (20) semester credit hours to include a minimum of six (6) semester credit hours of U.S. History Survey and a minimum of six (6) semester credit hours of World History Survey. Remaining course work must be in History. Course work may include three (3) semester credit hours in American Government. (4-11-06)

**121. Humanities (6-12).** An endorsement in English, History, Music, Visual Art, Drama, or Foreign Language and twenty (20) semester credit hours in one of the following areas or ten (10) semester credit hours in each of two (2) of the following areas: Literature, Music, Foreign Language, Humanities Survey, History, Visual Art, Philosophy, Drama, Comparative World Religion, Architecture, and Dance. (4-11-06)

**132. Journalism (6-12).** Follow one (1) of the following options: (3-16-04)

**a.** Option I: Twenty (20) semester credit hours to include a minimum of sixteen (16) semester credit hours in Journalism and four (4) semester credit hours in English. (3-16-04)

**b.** Option II: Possess an English endorsement with a minimum of six (6) semester credit hours in Journalism. (3-16-04)

**143. Library Media Specialist (K-12).** Twenty (20) semester credit hours in the field of Education Media or Library Science, including a minimum of: (5-8-09)

**a.** Collection Development/Materials Selection; (5-8-09)

**b.** Literature for Youth or Children; (5-8-09)

**c.** Organization of Information (Cataloging and Classification); (5-8-09)

**d.** School Library Administration/Management; and (5-8-09)

**e.** Library Information Technologies and Information Literacy. (5-8-09)

**154. Literacy (K-12).** Twenty (20) semester credit hours in the area of Literacy including a minimum of three (3) semester credit hours in each of the following areas: Foundations of Reading or Developmental Reading; Reading in the Content Area; Literature for Youth; Psycholinguistics or Language Development; Corrective/Diagnostic/Remedial Reading; and Teaching Writing. To obtain a Literacy endorsement, applicants must complete the Idaho Comprehensive Literacy Course or the Idaho Comprehensive Literacy Assessment. Remaining credits must be taken in the area of teaching literacy. (5-8-09)

**024. ENDORSEMENTS M - Z.**

- 01. Marketing Technology Education (6-12).** (3-16-04)
- a.** Twenty (20) ~~to forty-five (45)~~ semester credit hours to include standards based course work in each of the following areas: Marketing; Management; Economics; Coordination of Cooperative Programs; Merchandising/Retailing; ~~and Curriculum and Materials Marketing~~ Methods of Teaching Marketing Education; and Professional-Technical Student Organization (PTSO) Leadership, with remaining credit hours in ~~the field of business~~ Entrepreneurship; Hospitality and Tourism; Finance; or Accounting. (3-16-04)(    )
- b.** Occupational teacher preparation that relates to the appropriate area(s) as provided in Sections 034 through 038. (3-16-04)(    )
- 02. Mathematics - Basic (6-12).** Twenty (20) semester credit hours in Mathematics including course work in Algebra, Geometry, and Trigonometry. Six (6) semester credit hours of computer programming may be substituted for six (6) semester credits in Mathematics. (3-16-04)
- 03. Mathematics (6-12).** Twenty (20) semester credit hours including course work in each of the following areas: Geometry, Linear Algebra, Discrete Mathematics, Probability and Statistics, and a minimum of three (3) semester credit hours of Calculus. Statistics course work may be taken from a department other than the mathematics department. (4-11-06)
- 04. Music (6-12 or K-12).** Twenty (20) semester credit hours leading toward competency as defined by Idaho Standards for Music Teachers to include course work in the following: Theory and Harmony; Aural Skills, Music History; Conducting; Applied Music; and Piano Proficiency (Class Piano or Applied Piano), and Secondary Music Methods/Materials. To obtain a Music K-12 endorsement, applicants must complete an elementary music methods course. (4-7-11)
- 05. Natural Science (6-12).** Follow one (1) of the following options: (4-7-11)
- a.** Option I: Must hold an existing endorsement in one of the following areas: Biological Science, Chemistry, Earth Science, Geology, or Physics; and complete a total of twenty-four (24) semester credit hours as follows: (4-7-11)
- i.** Existing Biological Science Endorsement. Minimum of eight (8) semester credit hours in each of the following areas: Physics, Chemistry, and Earth Science or Geology. (4-7-11)
- ii.** Existing Physics Endorsement. Minimum of eight (8) semester credit hours in each of the following areas: Biology, Chemistry, and Earth Science or Geology. (4-7-11)
- iii.** Existing Chemistry Endorsement. Minimum of eight (8) semester credit hours in each of the following areas: Biology, Physics, and Earth Science or Geology. (4-7-11)
- iv.** Existing Earth Science or Geology Endorsement. Minimum of eight (8) semester credit hours in each of the following areas: Biology, Physics, and Chemistry. (4-7-11)
- b.** Option II: Must hold an existing endorsement in Agriculture Science and Technology; and complete twenty (20) semester credit hours with at least four (4) semester credit hours in each of the following areas: Biology, Chemistry, Earth Science or Geology, and Physics. (4-7-11)
- 06. Physics (6-12).** Twenty (20) semester credit hours in the area of Physics. (3-16-04)
- 07. Physical Education (PE) (6-12 or K-12).** Twenty (20) semester credit hours to include course work in each of the following areas: Sport, Movement, and Outdoor Skills; Elementary PE Methods; Secondary PE Methods; Student Evaluation in PE; Administration of a PE Program; Safety and Prevention of Injuries; Fitness and Wellness; PE for Special Populations; Exercise Physiology; Kinesiology/Biomechanics; Sports Psychology or Sociology; Motor Behavior; and Current CPR and First Aid Certification. (3-30-07)
- 08. Physical Education/Health.** Must have an endorsement in both physical education and health.



(3-30-07)

**09. Physical Science (6-12).** Twenty (20) semester credit hours in the area of physical science to include a minimum of eight (8) semester credit hours in each of the following: Chemistry and Physics. (3-16-04)

**10. Psychology.** Twenty (20) semester credit hours in the area of Psychology. (3-16-04)

**11. Social Studies (6-12).** Must have an endorsement in History, American Government/Political Science, Economics, or Geography plus a minimum of twelve (12) semester credit hours in each of the remaining core endorsements areas: History, Geography, Economics, and American Government/Political Science. (3-29-10)

**12. Sociology (6-12).** Twenty (20) semester credit hours in the area of Sociology. (3-16-04)

**13. Sociology/Anthropology (6-12).** Twenty (20) semester credit hours including a minimum of six (6) semester credit hours in each of the following: Anthropology and Sociology. (3-16-04)

**14. Technology Education (6-12).** (3-16-04)

**a.** Twenty (20) to forty-five (45) semester credit hours to include standards based course work in each of the following areas: Communication Technology; Computer Applications; Construction Technology; Electronics Technology; Manufacturing Technology; Power, Energy and Transportation and other relevant emerging technologies; and Principles of Technology Engineering Design. (3-16-04)( )

**b.** Occupational teacher preparation that relates to the appropriate area(s) as provided in Sections 034 through 038. (3-16-04)( )

**15. World Language (6-12 or K-12).** Twenty (20) to forty-five (45) semester credit hours to include a minimum of twelve (12) upper division credits in a specific world language taken within the last ten (10) years leading to a proficiency level as defined by a state-approved exam (for example, a passing grade on the Praxis or an Advanced level as defined by the American Council on the Teaching of Foreign Languages (ACTFL)). Standards based course work must include two (2) or more of the following areas: Grammar, Conversation, Composition, Culture, and Literature; and course work in Foreign Language Methods. To obtain an endorsement in a specific foreign language (K-12), applicants holding a Secondary Certificate must complete an elementary methods course. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**029. CONSULTING TEACHER/TEACHER LEADER ENDORSEMENT.**

Consulting teachers provide technical assistance to teachers and other staff in the school district with regard to the selection and implementation of appropriate teaching materials, instructional strategies, and procedures to improve the educational outcomes for students. ~~They may also provide direct intervention for students with significant needs.~~ Candidates who hold this endorsement are teacher leaders who will facilitate the design and implementation of sustained, intensive, and job-embedded professional learning based on identified student and teacher needs. This endorsement is valid for five (5) years and is renewable based upon successful completion and verification of an additional four (4) semester credits beyond those required for standard certification renewal. The additional credits shall be taken for university or college credit consistent with the Individual Professional Learning Plan (IPLP). (3-29-10)( )

**01. Special Education Consulting Teacher - Eligibility for Endorsement.** To be eligible for a Special Education Consulting Teacher endorsement on the Standard Exceptional Child Certificate, the Early Childhood /Early Childhood Special Education Blended Certificate (Birth-Grade 3), the Standard Elementary Certificate or the Standard Secondary Teaching Certificate, a candidate must have satisfied the following requirements: (3-29-10)

a. Education Requirements. Qualify for or hold a Standard Exceptional Child Certificate and qualify for or hold a Standard Elementary Certificate, Standard Secondary Certificate, or Early Childhood/Early Childhood Special Education Blended Certificate (Birth-Grade 3). ~~Plus completion, in an accredited college or university, of, and hold~~ a master's degree or an approved fifth year program as defined by the Idaho State Board of Education, and have demonstrated content competencies in the following areas: ( )

i. Assessment of learning behaviors; ( )

ii. Individualization of instructional programs based on educational diagnosis; ( )

iii. Behavioral and/or classroom management techniques; ( )

iv. Program implementation and supervision; ( )

v. Knowledge in use of current methods, materials and resources available and management and operation of media centers; ( )

vi. Ability in identifying and utilizing community or agency resources and support services; and ( )

vii. Counseling skills and guidance of professional staff. (4-11-06)( )

b. Experience. Completion of a minimum of three (3) years' teaching experience, at least two (2) years of which must be in a special education classroom setting. (3-16-04)

c. ~~Letter of Recommendation. Provide a letter of recommendation from the superintendent of a school district that provides verification of demonstrated competencies in the following areas: assessment of learning behaviors; individualization of instructional programs based on educational diagnosis; behavioral and/or classroom management techniques; program implementation and supervision; knowledge in use of current methods, materials and resources available and management and operation of media centers; ability in identifying and utilizing community or agency resources and support services; and counseling skills and guidance of professional personnel and three (3) years of successful experience as a special education teacher working with classroom teachers in elementary or secondary schools; and Provides verification of completion of a state-approved program of at least twenty (20) semester credit hours of study at an accredited college or university or a state-approved equivalent. Program shall include:~~ (4-11-06)( )

i. Ninety (90) contact hours to include a combination of face-to-face and field-based professional development activities; and ( )

ii. The development and presentation of a culminating portfolio that provides evidence that knowledge gained and skills acquired are aligned with Idaho Teacher Leader Standards as follows: ( )

(1) Understanding Adults As Learners to Support Professional Learning Communities; ( )

(2) Accessing and Using Research to Improve Practice and Student Achievement; ( )

(3) Promoting Professional Learning for Continuous Improvement; ( )

(4) Facilitating Improvements in Instruction and Student Learning; ( )

(5) Using Assessments and Data for School and District Improvement; ( )

(6) Improving Outreach and Collaboration with Families and Community; and ( )

(7) Advocating for Student Learning and the Profession. ( )

d. ~~Three (3) years~~ Not less than one (1) semester of successful experience as a special education

teacher working with classroom teachers in elementary or secondary schools. (4-11-06)( )

**02. Mathematics Consulting Teacher - Eligibility for Endorsement.** To be eligible for a Mathematics Consulting Teacher endorsement on the Standard Elementary Certificate, Standard Secondary Certificate, Standard Exceptional Child Certificate, or Early Childhood/Early Childhood Special Education Blended Certificate (Birth-Grade 3), a candidate must have satisfied the following requirements: (3-29-10)

**a.** Education Requirements. Qualify for or hold a Standard Elementary Certificate, Standard Secondary Certificate, Standard Exceptional Child Certificate, or Early Childhood/Early Childhood Special Education Blended Certificate (Birth-Grade 3) and have demonstrated content competencies, ~~in the following areas through a minimum of twenty (20) semester credit hours of e~~Coursework: and content domains required include the full series of Mathematics Thinking for Instruction (MTI), Number and Operation, Geometry, Algebraic Reasoning, Measurement and Data Analysis, and Statistics and Probability which are centered on the following emphases: (3-29-10)( )

~~**b.i.** The competencies are centered on four emphases: Big Ideas in~~ Structural Components of Mathematics; ( )

~~**ii.** Modeling, Justification, Proof and~~ Argumentation, Generalization; ( )

~~**iii.** Mathematics~~ al Knowledge for Teaching, and Rich Tasks. Coursework required includes the full series of Mathematics Thinking for Instruction (MTI), Geometry & Measurement, Algebraic Reasoning, and Data Analysis & Probability (Ball, Thames, & Phelps, 2008). (3-29-10)( )

~~**eb.** Experience. Completion of a minimum of three (3) years' teaching experience.~~ (3-29-10)

~~**dc.** Assessment of Performance. Prior to being granted the Mathematics Consulting Teacher endorsement, candidates must have proof of successful performance through teacher portfolios. These portfolios will include both quantitative and qualitative measurements such as pre and post interviews, teacher knowledge inventories, classroom video, lesson plans, and student work samples. Provides verification of completion of a state-approved program of at least twenty (20) semester credit hours of study at an accredited college or university or a state-approved equivalent. Program shall include:~~ (3-29-10)( )

~~**i.** Ninety (90) contact hours to include a combination of face-to-face and field-based professional development activities; and~~ ( )

~~**ii.** The development and presentation of a culminating portfolio that provides evidence that knowledge gained and skills acquired are aligned with Idaho Teacher Leader Standards as follows:~~ ( )

~~(1) Understanding Adults As Learners to Support Professional Learning Communities;~~ ( )

~~(2) Accessing and Using Research to Improve Practice and Student Achievement;~~ ( )

~~(3) Promoting Professional Learning for Continuous Improvement;~~ ( )

~~(4) Facilitating Improvements in Instruction and Student Learning;~~ ( )

~~(5) Using Assessments and Data for School and District Improvement;~~ ( )

~~(6) Improving Outreach and Collaboration with Families and Community; and~~ ( )

~~(7) Advocating for Student Learning and the Profession.~~ ( )

~~**d.** Not less than one (1) semester of successful experience as a mathematics teacher working with classroom teachers in elementary or secondary schools.~~ ( )

# IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

## 08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-1205

### 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 33-1511(2), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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:

On February 21, 2012 the State Department of Education (SDE) submitted an ESEA waiver to gain relief from the mandates of No Child Left Behind (NCLB). There were two application periods for waivers: November 2011 and February 2012. Idaho chose to apply in the second round so that the SDE was able to offer additional time for feedback and evaluation.

The SDE conducted extensive outreach. Once the draft application was completed, SDE met with stakeholders in person and through webinars to explain the waiver proposal. Along with the Institutional Research and Student Affairs Committee (IRSA), the SDE presented its ideas to the Board's Accountability Committee for feedback and took public comment via its website.

Principle 3 of the waiver clearly outlined required elements of teacher and principal evaluation models. As a result, Idaho needed to make adjustments to our teacher evaluation model and adopting a principal evaluation model for the state. The excerpt below is from the cover page that accompanied the waiver which was presented and approved at the State Board Meeting on February 16, 2012:

***Supporting Effective Instruction and Leadership:***

*Idaho developed a statewide framework for teacher evaluation. Schools also receive financial rewards for effective instruction as measured by student achievement. The SDE is currently creating a statewide framework for principal evaluation which should be completed by May 2012. The state will use their frameworks to then make necessary changes with teacher and administrator preparation programs.*

As a result of the work of both the Administrator Evaluation Focus Group and the Evaluation Capacity Task Force, both of which are referenced throughout the ESEA Waiver, recommended rule changes for increased rigor and utility of teacher evaluations are proposed, as well as a new section specific to administrator evaluation.

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

There is no imposed or increased fee associated with these changes.

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

These changes result in no fiscal impact.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because:

Due to the time sensitive manner of the rule, negotiation was not possible and the recommendations for the revisions came from committees made up of stakeholder groups representing those that will be impacted by the rule revision.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Luci Willits by email at [lbwillits@sde.idaho.gov](mailto:lbwillits@sde.idaho.gov), or by phone at 208-332-6814, or at the address listed below.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 16th day of August, 2012.

Tom Luna  
Idaho Superintendent of Public Instruction  
State Department of Education  
650 West State Street  
P.O. Box 83720  
Boise, Idaho 83720-0027  
telephone: 208-332-6800; fax: 208-334-2228

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0202-1205**

**120. LOCAL DISTRICT EVALUATION POLICY - TEACHER AND PUPIL PERSONNEL CERTIFICATE HOLDERS.**

Each school district board of trustees will develop and adopt policies for teacher performance evaluation using multiple measures in which criteria and procedures for the evaluation of certificated personnel are research based and aligned to Charlotte Danielson's Framework for Teaching Second Edition domains and components of instruction. The process of developing criteria and procedures for certificated personnel evaluation will allow opportunities for input from those affected by the evaluation; i.e., trustees, administrators and teachers. The evaluation policy will be a matter of public record and communicated to the certificated personnel for whom it is written. ~~(3-29-10)~~( )

**01. Standards.** Each district evaluation model shall be aligned to state minimum standards that are based on Charlotte Danielson's Framework for Teaching Second Edition domains and components of instruction. Those domains and components include: (3-29-10)

- a.** Domain 1 - Planning and Preparation: (3-29-10)
  - i. Demonstrating Knowledge of Content and Pedagogy; (3-29-10)
  - ii. Demonstrating Knowledge of Students; (3-29-10)
  - iii. Setting Instructional ~~Goals~~ Outcomes; ~~(3-29-12)~~( )
  - iv. Demonstrating Knowledge of Resources; (3-29-10)
  - v. Designing Coherent Instruction; and (3-29-10)
  - vi. Designing Student Assessments. (3-29-12)
- b.** Domain 2 - The Classroom Environment: (3-29-12)

- i. Creating an Environment of Respect and Rapport; (3-29-10)
- ii. Establishing a Culture for Learning; (3-29-10)
- iii. Managing Classroom Procedures; (3-29-10)
- iv. Managing Student Behavior; and (3-29-10)
- v. Organizing Physical Space. (3-29-10)
- c. Domain 3 - Instruction and Use of Assessment: (3-29-10)
  - i. Communicating with Students; (3-29-12)
  - ii. Using Questioning and Discussion Techniques; (3-29-10)
  - iii. Engaging Students in Learning; (3-29-10)
  - iv. Using Assessment in Instruction; and (3-29-12)
  - v. Demonstrating Flexibility and Responsiveness. (3-29-12)
- d. Domain 4 - Professional Responsibilities: (3-29-10)
  - i. Reflecting on Teaching; (3-29-10)
  - ii. Maintaining Accurate Records; (3-29-10)
  - iii. Communicating with Families; (3-29-10)
  - iv. Participating in a Professional Community; (3-29-12)
  - v. Growing and Developing Professionally; and (3-29-10)
  - vi. Showing Professionalism. (3-29-10)

**02. Parent Input.** For evaluations conducted on or after July 1, 2011, input from the parents and/or guardians of students shall be considered as a factor in the evaluation of any school-based certificated employees. For such certificated employees on a Category A, B or grandfathered renewable contract, this input shall be part of the first portion of the evaluation (as stipulated in 33-514(4), Idaho Code,) that must be completed before ~~February~~ March 1 of each year (Section 33-513 and 33-514, Idaho Code). ~~(3-29-12)~~(\_\_\_\_)

**03. Student Achievement.** For evaluations conducted on or after July 1, 2012, all certificated employees must receive an evaluation in which at least fifty percent (50%) of the evaluation results are based on objective measures of growth in student achievement as determined by the board of trustees and based upon research. This student achievement portion of the evaluation shall be completed by the end of the school year in which the evaluation takes place (Section 33-513 and 33-514, Idaho Code), and must include growth in student achievement as measured by the Idaho Student Achievement Test (ISAT). ~~(3-29-12)~~(\_\_\_\_)

**04. Participants.** Each district evaluation policy will include provisions for evaluating all certificated employees identified in Section 33-1001, Idaho Code, Subsection 16, ~~and each school nurse and librarian.~~ Evaluations shall be differentiated for pupil personnel certificate holders in a way that aligns with the Framework for Teaching to what extent possible. Policies for evaluating certificated employees should identify the differences, if any, in the conduct of evaluations for ~~nonrenewable contract personnel and renewable contract personnel~~ certificated employees on a Category A, B or grandfathered renewable contract. ~~(3-29-12)~~(\_\_\_\_)

**05. Evaluation Policy - Content.** Local school district policies will include, at a minimum, the following information: (4-1-97)

**a.** Purpose -- statements that identify the purpose or purposes for which the evaluation is being conducted; e.g., individual instructional improvement, personnel decisions. (4-1-97)

**b.** Evaluation criteria -- statements of the general criteria upon which certificated personnel will be evaluated. (4-1-97)

**c.** Evaluator -- identification of the individuals responsible for appraising or evaluating certificated personnel performance. The individuals assigned this responsibility ~~should~~ shall have received training in evaluation and after September 1, 2014, shall have proof of proficiency in evaluating teacher performance. (4-1-97)(    )

**d.** Sources of data -- description of the sources of data used in conducting certificated personnel evaluations. For classroom teaching personnel, classroom observation ~~should~~ shall be included as one (1) source of data. (4-1-97)(    )

**e.** Procedure -- description of the procedure used in the conduct of certificated personnel evaluations. (4-1-97)

**f.** Communication of results -- the method by which certificated personnel are informed of the results of evaluation. (4-1-97)

**g.** Personnel actions -- the action, if any, available to the school district as a result of the evaluation and the procedures for implementing these actions; e.g., job status change. Note: in the event the action taken as a result of evaluation is to not renew an individual's contract or to renew an individual's contract at a reduced rate, school districts should take proper steps to follow the procedures outlined in Sections 33-513 through 33-515, Idaho Code in order to assure the due process rights of all personnel. (4-1-97)

**h.** Appeal -- the procedure available to the individual for appeal or rebuttal when disagreement exists regarding the results of certificated personnel evaluations. (4-1-97)

**i.** Remediation -- the procedure available to provide remediation in those instances where remediation is determined to be an appropriate course of action. (4-1-97)

**j.** Monitoring and evaluation. -- A description of the method used to monitor and evaluate the district's personnel evaluation system. (4-1-97)

**k.** Professional development and training -- a plan for ongoing training ~~for evaluators/administrators and teachers on~~ and professional learning based upon the district's evaluation standards, ~~tool~~ and process. (3-29-10)(    )

**l.** Funding -- a plan for funding ongoing training and professional development for administrators in evaluation. (3-29-10)

**m.** Collecting and using data -- a plan for collecting and using data gathered from the evaluation tool that will be used to inform professional development. Aggregate data shall be the basis for the district's Needs Assessment in determining district-wide professional development. Individual performance data shall be the foundation of an Individual Professional Learning Plan for all teachers. Individual Professional Learning Plans shall be used in the annual evaluation as a means of measuring professional growth. Districts shall implement the use of Professional Growth Plans no later than September 1, 2014. (3-29-10)(    )

**n.** Individualizing teacher evaluation rating system -- A plan for how evaluations will be used to identify proficiency and ~~define a process that identifies and assists teachers in need of improvement~~ record growth over time. No later than March 01, 2014, districts shall have established an individualized teacher evaluation rating system with a ranking of unsatisfactory being equal to "1", basic being equal to "2", proficient being equal to "3", and distinguished being equal to "4". Districts shall ensure that an Individualized Professional Learning Plan is created

for each teacher based upon evaluation findings, and shall be used in subsequent years as the baseline measurement for professional development and growth. (3-29-10)( )

**o.** A plan for including all stakeholders including, but not limited to, teachers, board members, and administrators in the development and ongoing review of their teacher evaluation plan. (3-29-10)

**06. Evaluation Policy - Frequency of Evaluation.** The evaluation policy shall include a provision for evaluating all certificated personnel on a fair and consistent basis. All contract personnel shall be evaluated at least once annually. An annual evaluation (Section 33-514 and 33-515) shall include, at a minimum, two (2) formative observations and/or evaluative discussions. (3-29-12)( )

**07. Evaluation Policy - Personnel Records.** Permanent records of each certificated personnel evaluation will be maintained in the employee's personnel file. All evaluation records will be kept confidential within the parameters identified in federal and state regulations regarding the right to privacy (Section 33-518, Idaho Code). (4-1-97)

**08. Evaluation System Approval.** Each school district board of trustees will develop and adopt policies for teacher and pupil personnel certificated performance evaluation in which criteria and procedures for the evaluation of are research based and aligned with the Framework for Teaching. Once developed, each district shall submit the system of evaluation to the State Department of Education for approval prior to formal adoption. By January 1, 2014 an evaluation plan which incorporates all of the above elements shall be submitted to the State Department of Education for approval. Once approved, subsequent changes made in the evaluation system shall be resubmitted for approval. ( )

**121. LOCAL DISTRICT EVALUATION POLICY - ADMINISTRATIVE CERTIFICATE HOLDERS.** Each school district board of trustees will develop and adopt policies for administrator performance evaluation in which criteria and procedures for the evaluation of administratively certificated personnel are research based. The process of developing criteria and procedures for administrator evaluation will allow opportunities for input from those affected by the evaluation; i.e., trustees, administrators and teachers. The evaluation policy will be a matter of public record and communicated to the administrator for whom it is written. ( )

**01. Standards.** Each district administrator evaluation model shall be aligned to state minimum standards, including proof of proficiency in conducting teacher evaluations using the state's adopted model, the Charlotte Danielson Framework for Teaching. Proof of proficiency in evaluating teacher performance shall be required of all administrators no later than September 1, 2014. Administrator evaluation standards shall additionally address the following domains and components: ( )

**a.** Domain 1: School Climate - An educational leader promotes the success of all students by advocating, nurturing and sustaining a school culture and instructional program conducive to student learning and staff professional development. An educational leader articulates and promotes high expectations for teaching and learning. ( )

**i.** School Culture - Administrator establishes a safe, collaborative, and supportive culture ensuring all students are successfully prepared to meet the requirements for tomorrow's careers and life endeavors. ( )

**ii.** Communication - Administrator is proactive in communicating the vision and goals of the school or district, the plans for the future, and the successes and challenges to all stakeholders. ( )

**iii.** Advocacy - Administrator advocates for education, the district and school, teachers, parents, and students that engenders school support and involvement. ( )

**b.** Domain 2: Collaborative Leadership - An educational leader promotes the success of all students by ensuring management of the organization, operations and resources for a safe, efficient and effective learning environment. In collaboration with others, uses appropriate data to establish rigorous, concrete goals in the context of student achievement and instructional programs. He/She uses research and/or best practices in improving the education program. ( )



i. Shared Leadership - Administrator fosters shared leadership that takes advantage of individual expertise, strengths, and talents, and cultivates professional growth. ( )

ii. Priority Management - Administrator organizes time and delegates responsibilities to balance administrative/managerial, educational, and community leadership priorities. ( )

iii. Transparency - Administrator seeks input from stakeholders and takes all perspectives into consideration when making decisions. ( )

iv. Leadership Renewal - Administrator strives to continuously improve leadership skills through professional development, self-reflection, and utilization of input from others. ( )

v. Accountability - Administrator establishes high standards for professional, legal, ethical, and fiscal accountability self and others. ( )

**c. Domain 3: Instructional Leadership - An educational leader promotes the success of all students by facilitating the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by the school community. He/She provides leadership for major initiatives and change efforts and uses research and/or best practices in improving the education program.** ( )

i. Innovation - Administrator seeks and implements innovative and effective solutions that comply with general and special education law. ( )

ii. Instructional Vision - Administrator insures that instruction is guided by a shared, research-based instructional vision that articulates what students do to effectively learn the subject. ( )

iii. High Expectations - Administrator sets high expectation for all students academically, behaviorally, and in all aspects of student well-being. ( )

iv. Continuous Improvement of Instruction - Administrator has proof of proficiency in assessing teacher performance based upon the Danielson Framework for Teaching. Aligns resources, policies, and procedures toward continuous improvement of instructional practice guided by the instructional vision. ( )

v. Evaluation - Administrator uses teacher/administrator evaluation and other formative feedback mechanisms to continuously improve teacher/administrator effectiveness. ( )

vi. Recruitment and Retention -Administrator recruits and maintains a high quality staff. ( )

**02. Parent Input.** For evaluations conducted on or after July 1, 2012, input from the parents and/or guardians of students shall be considered as a factor in the evaluation of any school-based certificated employees (as stipulated in 33- 514(4), Idaho Code). ( )

**03. Student Achievement.** For evaluations conducted on or after July 1, 2012, all certificated employees must receive an evaluation in which at least fifty percent (50%) of the evaluation results are based on objective measures of growth in student achievement as determined by the board of trustees and based upon research. This student achievement portion of the evaluation shall be completed by the end of the school year in which the evaluation takes place (Section 33-513 and 33-514, Idaho Code) and must include growth in student achievement as measured by the Idaho Student Achievement Test (ISAT). ( )

**04. Evaluation Policy - Content.** Local school district policies will include, at a minimum, the following information: ( )

**a.** Purpose -- statements that identify the purpose or purposes for which the evaluation is being conducted; e.g., individual instructional leadership, personnel decisions. ( )

**b.** Evaluation criteria -- statements of the general criteria upon which administratively certificated personnel will be evaluated. ( )

c. Evaluator -- identification of the individuals responsible for appraising or evaluating administratively certificated personnel performance. The individuals assigned this responsibility shall have received training in evaluation. ( )

d. Sources of data -- description of the sources of data used in conducting administratively certificated personnel evaluations. Proficiency in conducting observations and evaluating effective performance shall be included as one (1) source of data. ( )

e. Procedure -- description of the procedure used in the conduct of administratively certificated personnel evaluations. ( )

f. Communication of results -- the method by which administratively certificated personnel are informed of the results of evaluation. ( )

g. Personnel actions -- the action, if any, available to the school district as a result of the evaluation and the procedures for implementing these actions; e.g., job status change. ( )

h. Appeal -- the procedure available to the individual for appeal or rebuttal when disagreement exists regarding the results of administrator evaluations. ( )

i. Remediation -- the procedure available to provide remediation in those instances where remediation is determined to be an appropriate course of action. ( )

j. Monitoring and evaluation -- a description of the method used to monitor and evaluate the district's administrator evaluation system. ( )

k. Professional development and training -- a plan for ongoing training and professional learning based upon the district's evaluation standards and process. ( )

l. Funding -- a plan for funding ongoing training and professional development for evaluators of administrators. ( )

m. Collecting and using data -- a plan for collecting and using data gathered from the evaluation tool that will be used to inform professional development. Individual performance data shall be the foundation of an Individual Professional Learning Plan for all administrators. Individual Professional Learning Plans shall be used in the annual evaluation as a means of measuring professional growth with an emphasis on instructional leadership. Districts shall implement the use of Professional Growth Plans no later than September 1, 2014. ( )

n. Individualizing administrator evaluation rating system -- a plan for how evaluations will be used to identify proficiency and record growth over time. No later than March 1, 2014, districts shall have established an individualized administrator evaluation rating system with a ranking of unsatisfactory being equal to "1", basic being equal to "2", proficient being equal to "3", and distinguished being equal to "4". Districts shall ensure that an Individualized Professional Learning Plan is created for each administrator based upon evaluation findings, and shall be used in subsequent years as the baseline measurement for professional development and growth. ( )

o. A plan for including all stakeholders including, but not limited to, teachers, board members, and administrators in the development and ongoing review of their administrator evaluation plan. ( )

**05. Evaluation Policy - Frequency of Evaluation.** The evaluation policy should include a provision for evaluating all administrative personnel on a fair and consistent basis. An annual evaluation (Section 33-514 and 33-515) shall include, at a minimum, two (2) formative observations and evaluative discussions. ( )

**06. Evaluation Policy - Personnel Records.** Permanent records of each administrator evaluation will be maintained in the employee's personnel file. All evaluation records will be kept confidential within the parameters identified in federal and state regulations regarding the right to privacy (Section 33-518, Idaho Code). ( )

**07. Evaluation System Approval.** Each school district board of trustees will develop and adopt policies for administrator performance evaluation in which criteria and procedures for the evaluation are research based and aligned with state standards. Once developed, each district shall submit the system of evaluation to the State Department of Education for approval prior to formal adoption. By January 1, 2014 an evaluation plan which incorporates all of the above elements shall be submitted to the State Department of Education for approval. Once approved, subsequent changes made in the evaluation system shall be resubmitted for approval. ( )

# **IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION**

## **08.02.02 - RULES GOVERNING UNIFORMITY**

**DOCKET NO. 08-0202-1206**

### **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, 33-116, and 33-1612, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

The proposed changes to IDAPA 08.02.02 would repeal three sections of rule that expired July 1, 2006, (039, 040, and 041) and clarify the alternate route to certification process. The process surrounding the attainment of certification through an alternate route is confusing, especially in the area of paraprofessionals to certification. It has proven to be very difficult for a para professional to attain certification within the allotted five (5) years, as specified under the preset definition. Additionally, as a result of increased accountability for federal reporting, it became clear that the Para to Teacher Route was not a true alternate route, but really an incentivized "grow your own" program. The new language will make a legitimate process available for paraprofessionals and clarify the prerequisites, which are the same as those required for a content specialist. This will allow for the separate language for the paraprofessional to certification route subsection to be eliminated as the amended route will work within the language specified under alternate route-content specialist section.

There is also conflicting language in the rule regarding the Computer-Based Alternative Route to Certification. The proposed language will also clear up any question regarding the completion of a two-year mentor program as part of the full certification process.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 will be conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was not published due to timing issues. Negotiated rulemaking will be conducted in conjunction to the proposed rule publication.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Tracie Bent, Chief Planning and Policy Officer, at (208)332-1582 or [tracie.bent@osbe.idaho.gov](mailto:tracie.bent@osbe.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24th, 2012.

DATED this 31st day of August, 2012.

Tracie Bent  
Chief Planning and Policy Officer  
Office of the State Board of Education  
650 W State St.  
PO Box 83720  
Boise, ID 83720-0037  
(208)332-1582, fax: (208)334-2632

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0202-1206

037. -- ~~038~~**41.** (RESERVED)

~~039. LIMITED APPROVAL ALTERNATIVES (EXPIRES JULY 1, 2006).~~

~~01. Consultant Specialist Certificate. At the request of a school district, the State Department of Education may issue a Consultant Specialist certificate to highly and uniquely qualified persons. The use of the certificate is limited to the applicant's district and is valid for one (1) year. It is intended that use of the Consultant Specialist provision be exceptional and occasional and not used as a regular hiring practice. (3-20-04)~~

~~02. Letters of Authorization (LOA). Letters of Authorization allow Idaho school districts to request emergency certification when a professional position cannot be filled with someone who has the correct certificate. Individuals considered for an LOA must have at least a baccalaureate degree and must enroll in a program to achieve full certification in the area of authorization. A request for a Letter of Authorization shall be sent to the State Department of Education. The request and supporting information will be reviewed by the Professional Standards Commission, with the final recommendation of the Commission submitted by the State Superintendent of Public Instruction for State Board of Education approval. An LOA is valid for one (1) year and may renewed annually upon completion of nine (9) semester credit hours applicable to the standards for full certification in the area of authorization. (3-20-04)~~

~~03. Limited Transitional Letter of Approval. This non-renewable letter of approval is valid for one (1) year only. The purpose of the letter of approval is to allow a teacher with secondary certification (grades 6-12) to teach at the elementary levels (K-8) without additional student teaching, or vice-versa. Other than student teaching, all other requirements for the desired certificate must be met. Upon successful completion of one (1) year of teaching while holding the Limited Transitional Letter of Approval, the educator will be eligible to hold the appropriate elementary or secondary certificate. To be eligible for a Limited Transitional Letter of Approval, the following requirements must be met: (3-20-04)~~

~~a. Must hold a valid Idaho Elementary or Secondary Teaching Certificate. (3-20-04)~~

~~b. Must provide verification of four (4) years of successful classroom teaching while holding the proper state certificate. (3-20-04)~~

~~c. Must have completed all of the requirements for the Standard Elementary Certificate, except student teaching, if the applicant currently holds a Standard Secondary Certificate. If the applicant currently holds a Standard Elementary Certificate, all of the requirements for a Standard Secondary Certificate must have been completed, except student teaching. (3-20-04)~~

~~d. Must provide the State Department of Education with written verification that a mentor teacher holding the same certificate as the one (1) the applicant is seeking will be provided for the applicant by the employing district, or be enrolled in a one (1) year supervised internship experience under the supervision of personnel from a college or university with an approved teacher preparation program. (3-20-04)~~

~~04. **Postsecondary Specialist.** A Postsecondary Specialist Letter of Approval may be granted to teaching faculty of Idaho public postsecondary institutions, who are not otherwise certificated, upon recommendation by the postsecondary institution (dean level or above) to be eligible to teach in the public schools. It is intended that the letter of approval will be used primarily for distance education and "virtual university" programs. The Postsecondary Specialist Letter of Approval is valid for five (5) years and is renewable. (3-20-04)~~

~~040. **MISASSIGNMENTS – GRANDFATHERING (EXPIRES JULY 1, 2006).**~~

~~01. **Certificate.** A person employed by a school district in a position requiring a certificate must hold a valid certificate for the service being rendered. In any situation in which a person not holding a specific endorsement is to provide educational services in a specific area, the employing district must apply to the State Department of Education for misassigned status to place the individual in that assignment for the school year. The district must demonstrate in a written report that it has made a good faith effort to employ properly certificated educators for those duties and that a conscientious effort is being made to remedy each specific problem. Criteria for acceptance of the report includes the following: (3-20-04)~~

~~a. The duties may comprise no more than one half (1/2) of the teacher's full time assignment; (4-1-97)~~

~~b. Teachers who are misassigned must have a minimum of six (6) semester hours of college credit in each subject area in which service is rendered; and (4-1-97)~~

~~c. Teachers who are misassigned must comprise no more than five percent (5%) of the total number of the district's certificated, full-time teachers, or five (5) teachers, whichever is greater. Districts which have secondary schools located more than fifteen (15) miles from another secondary school may misassign up to an additional five (5) teachers upon approval of the State Department of Education. However, in no circumstance will more than five (5) teachers be misassigned in any one building. (3-20-04)~~

~~02. **Effect of Accreditation.** All misassignments will be noted on the accreditation report. Any misassignments not meeting the above criteria may effect accreditation. Funds will be withheld for that portion of the misassigned person's time which exceeds the criteria included in this rule if a waiver has not been approved by the State Board of Education. (4-1-97)~~

~~041. **ALTERNATIVE CERTIFICATION (EXPIRES JULY 1, 2006).**~~

~~The purpose of this program is to provide an alternative for individuals to become certificated secondary teachers in Idaho without following a standard teacher education program. The purpose of this certification is to provide an alternative for individuals with strong subject matter background but limited experience with educational methodology. Qualified applicants will begin contracted teaching earlier and will be admitted to the program using criteria that are different from existing programs but more appropriate for the circumstances. This certification is valid for three (3) years and is non-renewable. To be eligible for alternative certification, the following requirements must be satisfied: (3-20-04)~~

~~01. **Initial Qualifications.** Prior to application: The prospective candidate must possess a baccalaureate (or higher) degree from an accredited college or university with a minimum grade point average of 2.0 on a four point zero (4.0) scale completed at least five (5) years earlier. Additionally, an applicant must hold academic credits equivalent to current major and minor requirements for secondary endorsements; be assured of full-time employment in an Idaho school district; and meet all non academic requirements of the state of Idaho. (3-20-04)~~

~~02. **Teacher Trainee Program.** Alternative certification is valid for two (2) years of teaching. The teacher trainee program must be completed within three (3) calendar years from the date of admission to the program. It authorizes the teacher trainee to teach only the subject(s) listed on the letter of approval and only at the secondary level. (3-20-04)~~

~~a. A teacher trainee will work toward completion of the teacher trainee program through participating colleges and universities, the State Department of Education, and the employing school district. A teacher must attend, participate in, and successfully complete an individualized two year teacher trainee program as~~

~~one of the conditions to receive recommendation for the Standard Secondary Teaching Certificate. A formal teacher trainee plan will be developed by a consortium composed of the mentor teacher, a representative from the school district, a representative of the State Department of Education, and a representative of the participating higher education institution with an approved secondary education program. Any deviation from the formal trainee plan must be approved by the consortium. The consortium will be responsible for the program design, supervision, and evaluation of the training. The teacher trainee program shall include:~~ (3-20-04)

~~i. Prior to entering the classroom, completion of nine (9) semester credit hours of pre-service training from an institution of higher education in educational course work pertinent to the education profession. (3-20-04)~~

~~ii. Prior to completion of the Alternate Route Program, at least one (1) course in each of the following areas must be completed: Philosophical Foundations of Education; Psychological Foundations of Education; Methodology; Reading in the Content Area. (3-20-04)~~

~~iii. Completion of a thirty (30) hour, pre-service orientation presented by the school district prior to a classroom assignment. This orientation shall include district policies, procedures, curriculum, instructional model, community characteristics, and resources. (3-20-04)~~

~~iv. Completion of a four-semester college/university internship. The trainee shall be enrolled in three (3) semester credit hours of internship each semester. (3-20-04)~~

~~v. Completion of a six to nine (6-9) semester credit hour program during the second summer from an institution of higher learning. The pre-service and second summer program of fifteen to eighteen (15-18) semester credit hours in total shall include: philosophical, psychological, and methodological foundations of the profession, and reading in the content area. The consortium will determine the content required for the trainee, which may include both pedagogical and subject area course work. When designing the content necessary for the individual teacher trainee to complete the program, the consortium shall consider previous college credit as documented in official transcripts. Efforts will be directed to provide observation and clinical experiences during the time prior to being assigned to the classroom. (3-20-04)~~

~~b. Assistance by Mentor Teachers: Each teacher trainee must be assisted by and guided throughout the two-year training period by a certificated employee of the district who has been designated as a mentor teacher. Principals must ensure that teacher trainees are provided with direct assistance, which should include close clinical supervision, especially at the beginning of the internship. (3-20-04)~~

~~c. Performance Evaluations: In order to receive a consortium recommendation for the Standard Secondary Teaching Certificate, the teacher trainee must complete at least two (2) years of successful performance as a teacher under the teacher trainee program. Principals are to provide assistance to teacher trainees regarding the purpose, expectations, and procedures involved in the evaluation process and with whatever guidance may be needed. The principal shall formally evaluate the teacher trainee at least once each semester of the school year. For purposes of suspension or dismissal, teacher trainees are to be treated as non-continuing contract employees. The district may suspend or dismiss teacher trainees in accordance with the procedures as provided in Idaho Code. The Teacher Trainee Letter of Approval may be suspended or revoked if there is failure to satisfactorily and successfully complete the stages of the individualized plan within the specified time frames as established by the consortium; or failure to obtain at least a two point five (2.5) grade point average on a four point zero (4.0) scale in the college credit portion of the program. Also, no individual grade can be lower than a "C"; or any other causes for suspension or revocation as found in Section 33-1208, Idaho Code. (3-20-04)~~

~~d. The teacher trainee, upon successful completion of the teacher trainee program as verified by the consortium, will be eligible to apply for a Standard Secondary Teaching Certificate. The two (2) years of experience as a teacher trainee shall be counted toward continuing contract status as authorized in Section 33-515, Idaho Code. (3-20-04)~~

**042. ALTERNATE ROUTES TO CERTIFICATION ~~(EFFECTIVE JULY 1, 2006).~~**

The purpose of this program is to provide an alternative for individuals to become certificated teachers in Idaho without following a standard teacher education program. Alternative Routes to Certification shall allow individuals to serve as the teacher of record prior to having earned full certification status. The teacher of record is defined as the

person who is primarily responsible for planning instruction, delivering instruction, assessing students formatively and summatively, and designating the final grade. Individuals who are currently employed as Para-Educators, individuals who are currently certificated to teach but who are in need of emergency certification in another area, and individuals with strong subject matter background but limited experience with educational methodology shall follow the alternate certification requirements provided herein. (3-20-04)( )

**043. ALTERNATIVE AUTHORIZATION – TEACHER TO NEW CERTIFICATION** ~~(EFFECTIVE JULY 1, 2006).~~

The purpose of this alternative authorization is to allow Idaho school districts to request endorsement/certification when a professional position cannot be filled with someone who has the correct endorsement/certification. Alternative authorization in this area is valid for up to three (3) years and is nonrenewable. (5-8-09)

**01. Initial Qualifications.** Prior to application, a candidate must hold a Bachelor's degree, and a valid Idaho teacher certificate without full endorsement in content area of need. The school district must provide supportive information attesting to the ability of the candidate to fill the position. (5-8-09)

**02. Alternative Route Preparation Program.** (3-20-04)

**a.** Option I - Teacher to New Certification/Endorsement. (5-8-09)

i. Candidate will work toward completion of the alternative route preparation program through a participating college/university, and the employing school district. Candidate must complete a minimum of nine (9) semester credits annually to be eligible for extension of up to a total of three (3) years. (3-20-04)

ii. The participating college/university shall provide procedures to assess and credit equivalent knowledge, dispositions, and relevant life/work experiences. (3-20-04)

iii. Candidate shall meet all requirements for the endorsement/certificate as provided herein. (3-20-04)

**b.** Option II - National Board (endorsement only). By earning National Board certification in content specific areas teachers may gain endorsement in a corresponding subject area. (5-8-09)

**c.** Option III - Master's degree or higher (endorsement only). By earning a graduate degree in a content specific area, candidates may add an endorsement in that same content area to a valid certificate. (5-8-09)

**d.** Option IV - Testing and/or Assessment (endorsement only). Two (2) pathways are available to some teachers, depending upon endorsement(s) already held. (5-8-09)

i. Pathway 1 - Endorsements may be added through state-approved testing and a mentoring component. The appropriate test must be successfully completed within the first year of authorization in an area closely compatible with an endorsement for which the candidate already qualifies and is experienced. Additionally requires the successful completion of a one (1)-year state-approved mentoring component. (5-8-09)

ii. Pathway 2 - Endorsements may be added through state-approved testing in an area less closely compatible with an endorsement for which the candidate already qualifies and is experienced. The appropriate test must be successfully completed within the first year of the authorization. Additionally requires the successful completion of a one (1)-year state-approved mentoring component and passing a final pedagogy assessment. (5-8-09)

**044. ALTERNATIVE AUTHORIZATION -- CONTENT SPECIALIST** ~~(EFFECTIVE JULY 1, 2006).~~

The purpose of this alternative authorization is to offer an expedited route to certification for individuals who are highly and uniquely qualified in a subject area to teach in a district with an identified need for teachers in that area. Alternative authorization in this area is valid for three (3) years and is not renewable. (3-20-04)

**01. Initial Qualifications.** (3-20-04)

**a.** Prior to application, a candidate must hold a Bachelor's degree or credit equivalent per review by the State Department of Education. (3-20-04)( )



- b. The candidate shall meet enrollment qualifications of the alternative route preparation program. (3-20-04)

**02. Alternative Route Preparation Program -- College/University Preparation.** (3-20-04)

a. A consortium comprised of a designee from the college/university to be attended, and a representative from the school district, and the candidate shall determine preparation needed to meet the Idaho Standards for Initial Certification of Professional School Personnel. This preparation must include mentoring and a minimum of one (1) classroom observation per month until certified. (3-20-04)

b. Prior to entering the classroom, the candidate completes eight (8) to sixteen (16) weeks of accelerated study in education pedagogy. (3-20-04)

c. Candidate will work toward completion of the alternative route preparation program through a participating college/university, and the employing school district. A teacher must attend, participate in, and successfully complete an individualized alternative route preparation program as one (1) of the conditions to receive a recommendation for full certification. (3-20-04)

d. The participating college/university shall provide procedures to assess and credit equivalent knowledge, dispositions and relevant life/work experiences. (3-20-04)

e. Prior to entering the classroom, the candidate shall meet or exceed the state qualifying score on appropriate state-approved content, pedagogy, or performance assessment. (3-20-04)

**045. COMPUTER-BASED ALTERNATIVE ROUTE TO TEACHER CERTIFICATION.**

An individual may acquire interim certification as found in Section 015 of these rules through a computer-based alternative route certification program. (4-6-05)

**01. Approval of the Program.** The State Board of Education must approve any computer-based alternative route to teacher certification. The program must include, at a minimum, the following components: (4-6-05)

a. Preassessment of teaching and content knowledge; (4-6-05)

b. An academic advisor with knowledge of the prescribed instruction area; and (4-6-05)

c. Exams of pedagogy and content knowledge. (4-6-05)

**02. Eligibility.** Individuals who possess a bachelor's degree or higher from an institution of higher education may utilize this alternative route to an interim Idaho Teacher Certification. (4-6-05)

**03. Requirements for Completion.** To complete this alternative route, the individual must: (4-6-05)

a. Complete a Board approved program; (4-6-05)

b. Pass the Board approved pedagogy and content knowledge exams; and (4-6-05)

c. Complete the Idaho Department of Education Criminal History Check. (4-6-05)

**04. Interim Certificate.** Upon completion of the computer-based certification process described herein, the individual will be awarded an interim certificate from the State Department of Education's Bureau of Certification and Professional Standards. The term of the interim certification shall be three (3) years. During the term of the interim certificate, teaching by the individual must be done in conjunction with a two (2) year a teacher mentoring program approved by the Board. The individual must start complete the mentoring program during the term of the interim certificate and it may be completed after standard certification is granted unless extenuating circumstances apply as determined by the State Department of Education. All laws and rules governing the fully

certificated teachers with respect to conduct, discipline and professional standards shall apply to individuals teaching under an interim certificate. (4-6-05)(    )

**05. Interim Certificate Not Renewable.** Interim certification hereunder is only available on a one (1) time basis per individual. It will be the responsibility of the individual to obtain full Idaho Teacher Certification during the three (3) year interim certification term. (4-6-05)

**06. Types of Certificates and Endorsements.** The computer-based alternative route may be used for initial certification, subsequent certificates, and additional endorsements. (4-11-06)

**046. ~~PARA EDUCATOR TO TEACHER (EFFECTIVE JULY 1, 2006). (RESERVED)~~**  
~~The purpose of this alternative route to certification is to encourage qualified para educators employed in Idaho classrooms to become certificated teachers. The alternative route preparation program must be completed within five (5) calendar years from the date of admission to the program. (3-20-04)~~

~~**01. Initial Qualifications.** Prior to application: the candidate must hold an AA or AS degree or equivalent, meet state para-educator standards, and be employed as a para-educator. Districts shall identify potential candidate with appropriate dispositions for teaching, and continue to employ candidate as para-educators. District/school provides orientation for candidate as deemed appropriate. (4-2-08)~~

~~**02. Alternative Route Preparation Program College University Preparation.** (3-20-04)~~

~~**a.** Candidate will work toward completion of the alternative route preparation program through a participating college/university, and the employing school district. A candidate must attend, participate in, and successfully complete an individualized alternative route preparation program as one (1) of the conditions to receive a recommendation for full certification. (3-20-04)~~

~~**b.** The participating college/university shall provide procedures to assess and credit equivalent knowledge, dispositions, and relevant life/work experiences. (3-20-04)~~

~~**c.** Candidate shall complete all requirements for certification as provided herein. (3-20-04)~~

# IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

## 08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-1205

### 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 33-1511(2), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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:

Title III Part A of the Elementary and Secondary Education Act requires states to have English language development/proficiency standards in place for Limited English Proficient (LEP) students. In 2006, Idaho adopted English Language Development Standards (ELD) in Language Arts followed by the Math and Science ELD standards in 2008. Extensive ongoing training and technical assistance has been provided for districts to help ensure effective rollout and implementation of these standards.

With the shift to the Common Core State Standards (CCSS) in Language Arts and Mathematics, Idaho must either augment its current ELD standards in order to align to the CCSS, or adopt new standards that are already in alignment.

The State Department of Education has chosen to adopt the 2012 World-Class Instructional Design and Assessment (WIDA) Standards as they have already been aligned to the CCSS. The notion that student outcomes will be improved through coherent systems of expectations is central to the WIDA Standards. WIDA's alignment study, conducted by the University of Oklahoma's Department of Educational Training, Evaluation, Assessment and Measurement, analyzed and confirmed the relationship between English language development standards and academic content through the Common Core State Standards.

Alignment to the Common Core (CC) includes, but is not limited to:

- Standards for individual grades;
- Topical vocabulary that reflects grade-level language related to the example topic;
- Cognitive Function and Example Context for Language Use are added; and
- Connections to a specific CC standard are made for each ELD standard.

The WIDA Standards are for grades Pre-K through 12th and are aligned to the following academic subject areas: Language Arts, Mathematics, Science, and Social Studies. In addition to these subject areas, WIDA has strands in various other subject areas such as Social and Instructional Language, Technology and Engineering, Health and Physical Education, and Music and Performing Arts.

Each standard has key elements of mastery for each language level, is explicitly connected to the CCSS, and has Topical Academic Vocabulary, Cognitive Function, and Example Context for Language Use specific to each subject area.

Idaho has also joined the Assessment Services Supporting ELs through Technology Systems (ASSETS) consortium for the "next generation" of language proficiency tests. Twenty nine states will work together to build a new language proficiency assessment based on the 2012 WIDA standards.

Idaho's English Language Proficiency Standards Implementation Timeline:

- August 2012: Present the WIDA ELD Standards to the State Board of Education.

- January 2013: Board Rules to adopt WIDA ELD Standards to Idaho Legislature.
- School year 2013-2014: Implementation of the WIDA ELD standards. Continued Professional Development will be provided.

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

There is no imposed or increased fee associated with these changes.

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

These changes result in no fiscal impact.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the academic standards were developed by national experts. Idaho educators will be given the opportunity to comment on the standards.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The WIDA standards will guide educators in teaching English learners academic content, as aligned with the Common Core State Standards. The WIDA standards are a large document, so are more amenable to being incorporated by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Luci Willits by email at [lbwillits@sde.idaho.gov](mailto:lbwillits@sde.idaho.gov), or by phone at 208-332-6814, or at the address listed below.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 16th day of August, 2012.

Tom Luna  
Idaho Superintendent of Public Instruction  
State Department of Education  
650 West State Street  
P.O. Box 83720  
Boise, Idaho 83720-0027  
telephone: 208-332-6800; fax: 208-334-2228

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0203-1205**

**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. Individual subject content standards are adopted in various years in relation to the curricular materials adoption schedule. Copies of the document can be found on the State Board of Education website at

- [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). (3-29-10)
- a. Driver Education, as revised and adopted on August 21, 2008. (3-29-10)
  - b. Health, as revised and adopted on April 17, 2009. (3-29-10)
  - c. Humanities Categories: (3-29-10)
    - i. Art, as revised and adopted on April 17, 2009; (3-29-10)
    - ii. Dance, as revised and adopted on April 17, 2009; (3-29-10)
    - iii. Drama, as revised and adopted on April 17, 2009; (3-29-10)
    - iv. Interdisciplinary, as revised and adopted on April 17, 2009; (3-29-10)
    - v. Music, as revised and adopted on April 17, 2009; (3-29-10)
    - vi. World languages, as revised and adopted on April 17, 2009. (3-29-10)
  - d. English Language Arts, as revised and adopted on August 11, 2010. (4-7-11)
  - e. Limited English Proficiency, as revised and adopted on August 21, 2008. (3-29-10)
  - f. Mathematics, as revised and adopted on August 11, 2010. (4-7-11)
  - g. Physical Education, as revised and adopted on April 17, 2009. (3-29-10)
  - h. Science, as revised and adopted on April 17, 2009. (3-29-10)
  - i. Social Studies, as revised and adopted on April 17, 2009. (3-29-10)
  - j. Information and Communication Technology, as revised and adopted on April 22, 2010. (4-7-11)
- 02. The Idaho English Language Development (ELD) Standards.** The Idaho World-Class Instructional Design and Assessment (WIDA) 2012 English Language Development (ELD) Standards as adopted by the State Board of Education on August 10, ~~2006~~ 2012. Copies of the document can be found on the State Board of Education website at [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov) WIDA website at [www.wida.us/standards/eld.aspx](http://www.wida.us/standards/eld.aspx). (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 November 11, 2009. Copies of the document can be found on the State Department of Education website at [www.sde.idaho.gov](http://www.sde.idaho.gov). (4-7-11)
- 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 November 11, 2009. Copies of the document can be found on the State Department of Education website at [www.sde.idaho.gov](http://www.sde.idaho.gov). (4-7-11)
- 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 [www.boardofed.idaho.gov](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 [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). (5-8-09)

**07. The Idaho Alternate Assessment Achievement Standards.** Alternate Assessment Achievement Standards as adopted by the State Board of Education on May 18, 2011. Copies of the document can be found on the State Board of Education website at [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). (3-29-12)

**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 [www.boardofed.idaho.gov](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 [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). (4-2-08)

# IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

## 08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-1206

### 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 33-1511(2), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

Section 33-1627, Idaho Code, establishes a mobile computing device program for high school teachers, beginning in the 2012-13 school year, and students, beginning in the 2013-14 school year. It also allows school districts that already have a mobile computing program to receive an allocation of funds equal to the cost of purchasing mobile computing devices, in lieu of receiving such devices. Therefore, the state needs a framework to determine whether or not a school district meets the goal of the one-to-one mobile computing device program before discretionary funds in lieu of devices are allocated.

The definition in the proposed rule was crafted to take into account the need for every student and teacher to have access to the device all day, rather than a lab with limited devices, and the need for the devices to have connectivity, full functionality and mobility.

The definition in the proposed rule was crafted at the recommendation of the Technology Task Force in order to define a holistic approach to professional development that is well planned and administered to develop and promote effective instructional practices. The definition ensures the incorporation of high academic standards, data driven analysis and review, individualized course offerings or opportunities, and developing professional learning communities.

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

There is no imposed or increased fee associated with these changes.

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

These changes result in no fiscal impact.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because:

These definitions are in response to the recommendations of the 39 member Technology Taskforce. The Public will have the opportunity to respond and give comment during State Board meetings and during the public comment period.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Luci Willits by email at [lbwillits@sde.idaho.gov](mailto:lbwillits@sde.idaho.gov), or by phone at 208-332-6814, or at the address listed below.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 16th day of August, 2012.

Tom Luna  
Idaho Superintendent of Public Instruction  
State Department of Education  
650 West State Street

P.O. Box 83720  
Boise, Idaho 83720-0027  
telephone: 208-332-6800  
fax: 208-334-2228

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0203-1206**

**008. DEFINITIONS H - S.**

**01. Interdisciplinary or Integrated Assessment.** Assessment based on tasks that measures a student's ability to apply concepts, principles, and processes from two (2) or more subject disciplines to a project, issue, or problem. (4-5-00)

**02. International Baccalaureate (IB)** - Administered by the International Baccalaureate Organization, the IB program provides a comprehensive liberal arts course of study for students in their junior and senior years of high school. IB students take end-of-course exams that may qualify for college credit. Successful completion of the full course of study leads to an IB diploma. (4-11-06)

**03. Laboratory.** A laboratory science course is defined as one in which at least one (1) class period each week is devoted to providing students with the opportunity to manipulate equipment, materials, specimens or develop skills in observation and analysis and discover, demonstrate, illustrate or test scientific principles or concepts. (4-11-06)

**04. Learning Plan.** The plan that outlines a student's program of study, which should include a rigorous academic core and a related sequence of electives in academic, professional-technical education (PTE), or humanities aligned with the student's post graduation goals. (4-11-06)

**05. Narrative.** Text in any form (print, oral, or visual) that recounts events or tells a story. (4-5-00)

**06. Norm-Referenced Assessment.** Comparing a student's performance or test result to performance of other similar groups of students; (e.g., he typed better than eighty percent (80%) of his classmates.) (4-5-00)

**07. On-Demand Assessment.** Assessment that takes place at a predetermined time and place. Quizzes, state tests, SATs, and most final exams are examples of on-demand assessment. (4-5-00)

**08. One-to-One Mobile Computing Program.** Each student and teacher has possession of their own district- or state-funded, mobile computing device that can wirelessly connect to the Internet, operate productivity tools, and facilitate collaborative online work at any time during the school day while at school. The Program must also incorporate Professional Development that addresses, at a minimum, technological and pedagogical attributes to support effective integration into instruction. ( )

**08. Online Course.** A course in which at least eighty percent (80%) of the course content is delivered over the Internet or through the use of technology. An online course may be asynchronous or synchronous. Online teachers may perform the course work from an alternate location while a paraprofessional or other school staff member supervises students in a computer lab environment. (3-29-12)

**09.10. Online Learning.** Education in which the majority of course content is delivered online or through



the use of technology. Courses may be delivered in an asynchronous or synchronous course format and may include blended or hybrid course models or fully online course models. (3-29-12)

a. Online learning does not include printed-based correspondence education, broadcast television or radio, videocassettes, and stand-alone education software programs that do not have a significant internet-based instructional component. (3-29-12)

b. Online learning is not simply computer based instruction, but rather requires that the online teacher and the student have ongoing access to one another for purposes of teaching, evaluating, and providing assistance to the student throughout the duration of the course. All online learning must meet Idaho content standards. (6-21-12)T

**101. Online Teacher (Instructor).** The teacher of record who holds an appropriate Idaho certification and provides the primary instruction for an online course. (3-29-12)

**112. Performance Assessment.** Direct observation of student performance or student work and professional judgment of the quality of that performance. Good quality performance assessment has pre-established performance criteria. (4-5-00)

**123. Performance-Based Assessment.** The measurement of educational achievement by tasks that are similar or identical to those that are required in the instructional environment, as in performance assessment tasks, exhibitions, or projects, or in work that is assembled over time into portfolio collections. (4-5-00)

**134. Performance Criteria.** A description of the characteristics that will be judged for a task. Performance criteria may be holistic, analytic trait, general or specific. Performance criteria are expressed as a rubric or scoring guide. Anchor points or benchmark performances may be used to identify each level of competency in the rubric or scoring guide. (4-5-00)

**145. Phonics.** Generally used to refer to the system of sound-letter relationships used in reading and writing. Phonics begins with the understanding that each letter (or grapheme) of the English alphabet stands for one (1) or more sounds (or phonemes). (4-5-00)

**156. Portfolio.** A collection of materials that documents and demonstrates a student's academic and work-based learning. Although there is no standard format for a portfolio, it typically includes many forms of information that exhibit the student's knowledge, skills, and interests. By building a portfolio, students can recognize their own growth and learn to take increased responsibility for their education. Teachers, mentors, and employers can use portfolios for assessment purposes and to record educational outcomes. (4-5-00)

**17. Professional Development.** A comprehensive, sustained, timely, and intensive process to improve effectiveness of teachers and administrators in raising student achievement, which: ( )

**a.** Aligns with rigorous state academic achievement standards, local educational agency goals, school improvement goals, effective technology integration, and Common Core standards. ( )

**b.** Utilizes data driven instruction using a thorough review and continual evaluation of data on teacher and student performance to define clear goals and distinct outcomes. ( )

**c.** Provides opportunities that are individualized enough to meet distinct and diverse levels of need for teachers and administrators. ( )

**d.** Is facilitated by well-prepared school administrators, coaches, mentors, master teachers, lead teachers, or third-party providers under contract with the State Department of Education, school district, or charter school, and supported by external research, expertise, or resources. ( )

**e.** Fosters a collective responsibility by educators within the school for improved student performance and develops a professional learning community. ( )

**168. Print Awareness.** In emergent literacy, a learner's growing awareness of print as a system of

meaning, distinct from speech and visual modes of representation. (4-5-00)

**179. Professional-Technical Education.** Formal preparation for semi-skilled, skilled, technical, or paraprofessional occupations, usually below the baccalaureate level. (4-11-06)

**1820. Proficiency.** Having or demonstrating a high degree of knowledge or skill in a particular area. (4-5-00)

**1921. School-to-Work Transition.** A restructuring effort that provides multiple learning options and seamless integrated pathways to increase all students' opportunities to pursue their career and educational interests. (4-5-00)

**202. Service Learning.** Combining service with learning activities to allow students to participate in experiences in the community that meet actual human needs. Service learning activities are integrated into the academic curriculum and provide structured time for a student to think, talk, or write about what was done or seen during the actual service activity. Service learning provides students with opportunities to use newly acquired skills and knowledge in real-life situations in their communities, and helps foster the development of a sense of caring for others. (4-5-00)

**243. Skill Certificate.** Portable, industry-recognized credential that certifies the holder has demonstrated competency on a core set of performance standards related to an occupational cluster area. Serving as a signal of skill mastery at benchmark levels, skill certificates may assist students in finding work within their community, state, or elsewhere. A National Skills Standards Board is presently charged with issuing skill voluntary standards in selected occupations based on the result of research and development work completed by twenty-two (2) contractors. (4-5-00)

**244. Standards.** Statements about what is valued in a given field, such as English language arts, and/or descriptions of what is considered quality work. See content standards, assessment standards, and achievement standards. (4-2-08)

**235. Standardization.** A set of consistent procedures for constructing, administering and scoring an assessment. The goal of standardization is to ensure that all students are assessed under uniform conditions so the interpretation of performance is comparable and not influenced by differing conditions. Standardization is an important consideration if comparisons are to be made between scores of different individuals or groups. (4-5-00)

**246. Standards-Based Education.** Schooling based on defined knowledge and skills that students must attain in different subjects, coupled with an assessment system that measures their progress. (4-5-00)

**257. Structured Work Experience.** A competency-based educational experience that occurs at the worksite but is tied to the classroom by curriculum through the integration of school-based instruction with worksite experiences. Structured work experience involves written training agreements between school and the worksite, and individual learning plans that link the student's worksite learning with classroom course work. Student progress is supervised and evaluated collaboratively by school and worksite personnel. Structured work experience may be paid or unpaid; may occur in a public, private, or non-profit organization; and may or may not result in academic credit and/or outcome verification. It involves no obligation on the part of the worksite employer to offer regular employment to the student subsequent to the experience. (4-5-00)

**268. Student Learning Goals (Outcomes).** Statements describing the general areas in which students will learn and achieve. Student learning goals typically reflect what students are expected to know by the time they leave high school, such as to read and communicate effectively; think critically and solve problems; develop positive self-concept, respect for others and healthy patterns of behavior; work effectively in groups as well as individually; show appreciation for the arts and creativity; demonstrate civic, global and environmental responsibility; recognize and celebrate multicultural diversity; exhibit technological literacy; have a well developed knowledge base which enhances understanding and decision making, and demonstrate positive problem solving and thinking skills. (4-5-00)

**279. Synchronous Course.** A course in which the teacher and students interact at the same time. May be applied to both traditional and technology based courses. (3-29-12)

**IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION**

**08.02.04 - RULES GOVERNING PUBLIC CHARTER SCHOOLS**

**DOCKET NO. 08-0204-1201**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is August 16, 2012.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 33-105, 33-5203 and 33-5210, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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 State Board of Education will be considering changes to IDAPA 08.02.04, "Rules Governing Public Charter Schools," that are intended to improve administrative efficiency and that update the rule to correspond with statutory amendments.

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

To come into compliance with amendments made to Chapter 52, Title 33, Idaho Code made during the 2012 legislative session.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2012 Idaho Administrative Bulletin, [Volume 12-7, page 40](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Tracie Bent, Chief Planning and Policy Officer, at (208)332-1582 or [tracie.bent@osbe.idaho.gov](mailto:tracie.bent@osbe.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 31st day of August, 2012.

Tracie Bent  
Chief Planning and Policy Officer  
Office of the State Board of Education  
650 W State St.

PO Box 83720  
Boise, ID 83720-0037  
phone: (208)332-1582  
fax: (208)334-2632

THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 08-0204-1201

010. DEFINITIONS.

01. **Authorized Chartering Entity.** Is defined in Section 33-5202A(1), Idaho Code, and means either the local board of trustees of a school district in this state, or the Idaho Public Charter School Commission. (4-11-06)

02. **Board.** Means the Idaho State Board of Education. (4-11-06)

03. **Charter.** Is defined in Section 33-5202A(2), Idaho Code, and means the grant of authority approved by the authorized chartering entity to the board of directors of the charter school. (4-11-06)

04. **Commission.** Means the Idaho Public Charter School Commission, as provided by Section 33-5213, Idaho Code. (4-11-06)

05. **Department.** Means the Idaho Department of Education. (4-11-06)

06. **Founder.** Is defined in Section 33-5202A(3), Idaho Code, and means a person, including employees or staff of a public charter school, who makes a material contribution toward the establishment of a public charter school in accordance with criteria determined by the board of directors of the public charter school, and who is designated as such at the time the board of directors acknowledges and accepts such contribution. The criteria for determining when a person is a founder shall not discriminate against any person on any basis prohibited by the federal or state constitutions or any federal, state, or local law. The designation of a person as a founder, and the admission preferences available to the children of a founder, shall not constitute pecuniary benefits. (4-11-06)

07. **Petition.** Is defined in Section 33-5202A(4), Idaho Code, and means the document submitted by a person or persons to the authorized chartering entity to request the creation of a public charter school. (4-11-06)

08. **Petitioners.** Means the group of persons who submit a petition to establish a new public charter school, or to convert an existing traditional public school to a public charter school, as provided by Section 33-5205, Idaho Code, and the procedures described in Sections 200 through 205 of these rules. (4-11-06)

09. **Public Charter School.** Is defined in Section 33-5202A(5), Idaho Code, and means a school that is authorized under the Public Charter Schools Act, Title 33, Chapter 52, Idaho Code, to deliver public education in Idaho. (4-11-06)

10. **Public Virtual School.** Is defined in Section 33-5202A(68), Idaho Code, and means a *public charter school that may serve students in more than one (1) school district and through which the primary method for the delivery of instruction to all of its pupils is through virtual distance learning or online technologies* school that delivers a full-time, sequential program of synchronous and/or asynchronous instruction primarily through the use of technology via the internet in a distributed environment. Schools classified as virtual must have an online component to their school with online lessons and tools for student and data management. (4-11-06)(8-16-12)T

11. **School Year.** Means the period beginning on July 1 and ending the next succeeding June 30 of each year. (4-11-06)

011. -- 099. (RESERVED)

100. LIMITATIONS ON NEW PUBLIC CHARTER SCHOOLS.

~~01. **Number of New Public Charter Schools Approved for a School Year.** Section 33-5203(2), Idaho Code, limits the number of new public charter schools that may be approved to begin instruction for a school year to not more than six (6), and further limits the number of new public charter schools that may be approved for a single school district for a school year to not more than one (1). The Board shall use the procedure described in Section 100~~

~~of these rules for implementing this limitation on the approval of new public charter schools. (4-11-06)~~

**021. Responsibilities of Petitioners on Approval of Charter.** Upon the approval of a new public charter school by an authorized chartering entity, the petitioners shall ~~be responsible for providing~~ the Board with written notice of such approval, ~~and shall promptly submit a copy of the final approved petition to the Board, as required by Section 33-5206(6), Idaho Code. In addition, in the event the charter is revised at any time, as permitted by Section 33-5209(1), Idaho Code, and pursuant to the procedures described in Section 302 of these rules, the governing board of the public charter school shall also be responsible for submitting copies of any such charter revisions to the Board.~~ The authorized chartering entity of the public charter school shall provide the Board with copies of the charter and any charter revisions upon request. ~~(4-11-06)~~(8-16-12)T

~~**03. Chronological Numbering System.** The Board, in accordance with Section 33-5206(6), Idaho Code, shall record the date and the time that it receives each final approved petition for a new public charter school. In addition, the Board shall assign a number to each final approved petition that it receives on a chronological basis, beginning with the numeral "1," and continuing sequentially thereafter. The Board shall maintain a chronological list of approved charters for the purpose of determining which public charter schools shall be authorized to begin educational instruction during a given school year. (4-11-06)~~

**042. Authorization to Begin Educational Instruction.** The ~~six (6)~~ public charter schools ~~that will be~~ authorized to begin educational instruction during a given school year shall be those public charter schools that have ~~been assigned the lowest chronological number by the Board, and which are eligible to begin educational instruction at some time during such school year. A public charter school will be considered "eligible" in accordance with the preceding sentence if the public charter school has~~ received approval from ~~its~~ their authorized chartering entity~~ies~~ to begin educational instruction at some time during such school year. ~~In addition, a public charter school will be considered "eligible" only if no other public charter school located within the same school district has been assigned a lower chronological number, and has been approved to begin educational instruction during such school year. A public charter school that is not authorized to begin educational instruction because it is not "eligible," as described herein, shall maintain its position on the Board's chronological list of approved charters, and shall be under consideration for authorization to begin educational instruction during the next succeeding school year.~~ A public charter school that is approved by an authorized chartering entity, but which does not begin educational instruction ~~because it is not "eligible," as described herein,~~ must confirm with the Board, on or before March 1 preceding the next succeeding school year, that it is able to begin educational instruction during such school year. ~~(4-11-06)~~(8-16-12)T

**053. Notification.** The Board shall, as soon as reasonably practicable after determining that a public charter school will be authorized to begin educational instruction during a given school year, provide written notification to the petitioners. The Board shall also send a copy of such notification to the authorized chartering entity that approved the charter. (4-11-06)

101. -- 199. (RESERVED)

## 200. PROCEDURE FOR FORMATION OF A NEW PUBLIC CHARTER SCHOOL.

**01. Assistance With Petitions.** The Department shall, in accordance with Section 33-5211, Idaho Code, provide technical assistance to public charter school petitioners. The Department shall undertake this statutory responsibility by conducting public charter school workshops, as discussed in Subsection 200.02 of this rule. (4-11-06)

**02. Public Charter School Workshops.** The purpose of the public charter school workshops shall be to provide public charter school petitioners with a brief overview of a variety of educational and operational issues relating to public charter schools, as well as to answer questions and to provide technical assistance, as may be necessary, to aid petitioners in the preparation of public charter school petitions. (4-11-06)

**03. Petition Sufficiency Reviews.** Prior to submitting a petition to an authorized chartering entity, petitioners shall submit ~~six one (61)~~ one (1) ~~copies~~ of the proposed draft petition to the Department, which will review the proposed draft petition to determine whether it complies with statutory requirements. ~~(4-11-06)~~(8-16-12)T

**201. POLICIES AND PROCEDURES ADOPTED BY AN AUTHORIZED CHARTERING ENTITY.**

**01. Charter School Policies and Procedures.** An authorized chartering entity may adopt its own charter school policies and procedures describing the charter school petition process and the procedures that petitioners must comply with in order to form a new public charter school, including a public virtual school. Petitioners must comply with the charter school policies and procedures adopted by the authorized chartering entity with which a petition is submitted. Such charter school policies and procedures must comply with Title 33, Chapter 52, Idaho Code, and the rules promulgated by the Board. If there is any conflict between the charter school policies and procedures adopted by an authorized chartering entity and rules promulgated by the Board, then the Board rules shall govern. (4-11-06)

**02. Application Deadline.** Petitioners must submit a new petition to an authorized chartering entity by September 1 in order to be eligible to begin educational instruction for the following school year as required by Section 33-5203, Idaho Code. A petition filed after such date ~~may not be rejected by an authorized chartering entity as untimely, but if the petition is approved and the charter is granted, the proposed public charter school will not be that is approved and the charter granted shall not be~~ eligible to begin operations until the next succeeding school year at the earliest, ~~and only if authorized to begin operations during such school year in accordance with the approval procedure described in Subsection 100.04 of these rules.~~ (4-11-06)(8-16-12)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**203. ADMISSION PROCEDURES.**

**01. Model Admission Procedures.** In accordance with Section 33-5205(3)(i), Idaho Code, a petition to establish a new public charter school must describe the admission procedures to be utilized by the public charter school. In order to ensure that public charter schools utilize a fair and equitable selection process for initial admission to and enrollment in a public charter school, as well as admission to and enrollment in a public charter school during subsequent school years, the Board has approved model admission procedures that may be utilized and adopted by petitioners. The approved model admission procedures are described in Subsections 203.03 through 203.12 of these rules. Petitioners are not required to adopt the Board's model admission procedures, but must demonstrate a reason for varying from the Board's approved procedures. (4-11-06)

**02. Enrollment Opportunities.** Section 33-5205(3)(s), Idaho Code, requires petitioners to describe the process by which the citizens in the area of attendance shall be made aware of the enrollment opportunities of the public charter school. Petitioners shall ensure that such process includes the dissemination of enrollment information, taking into consideration the language demographics of the attendance area, at least three (3) months in advance of the enrollment deadline established by the public charter school each year, to be posted in highly visible and prominent locations within the area of attendance of the public charter school. In addition, petitioners shall ensure that such process includes the dissemination of press release or public service announcements, to media outlets that broadcast within, or disseminate printed publications within, the area of attendance of the public charter school; petitioners must ensure that such announcements are broadcast or published by such media outlets on not less than three (3) occasions, beginning not later than fourteen (14) days prior to the enrollment deadline each year. Finally, such enrollment information shall advise that all prospective students will be given the opportunity to enroll in the public charter school, regardless of race, color, national or ethnic origin, religion, gender, social or economic status, or special needs. (4-11-06)

**03. Enrollment Deadline.** Each year a public charter school shall establish an enrollment admissions deadline, which shall be the date by which all written requests for admission to attend the public charter school for the next school year must be received. The enrollment deadline cannot be changed once the enrollment information is disseminated as required by Subsection 203.02. (4-11-06)

**04. Requests for Admission.** A parent, guardian, or other person with legal authority to make decisions regarding school attendance on behalf of a child in this state, may make a request in writing for such child to attend a public charter school. In the case of a family with more than one (1) child seeking to attend a public charter

school, a single written request for admission must be submitted on behalf of all siblings. The written request for admission must be submitted to, and received by, the public charter school at which admission is sought on or before the enrollment deadline established by the public charter school. The written request for admission shall contain the name, grade level, address, and telephone number of each prospective student in a family. If the initial capacity of the public charter school is insufficient to enroll all prospective students, then an equitable selection process, such as a lottery or other random method, shall be utilized to determine which prospective students will be admitted to the public charter school, as described in Subsection 203.09 of this rule. Only those written requests for admission submitted on behalf of prospective students that are received prior to the enrollment deadline established by the public charter school shall be permitted in the equitable selection process. Only written requests for admission shall be considered by the public charter school. Written requests for admission received after the established enrollment deadline will be added to the bottom of the waiting list for the appropriate grade. If there is an opening in one grade, a sibling, if any, from a late submitted application must go to the bottom of the sibling list. (4-11-06)

**05. Admission Preferences.** A public charter school shall establish an admission preference for students residing in the attendance area of the public charter school, as provided in Section 33-5206, Idaho Code. In addition, a public charter school may establish admission preferences, as authorized by Section 33-5205(3)(i), Idaho Code, for students returning to the public charter school, for children of founders, and for siblings of students already selected to attend the public charter school. Such admission preferences must be approved by the authorized chartering entity and described in the final approved petition. (4-11-06)

**06. Priority of Preferences for Initial Enrollment.** If a public charter school determines to establish admission preferences for initial enrollment of students in a public charter school, then the selection hierarchy with respect to such preferences shall be as follows: (4-11-06)

**a.** First, to children of founders, provided that this admission preference shall be limited to not more than ten percent (10%) of the initial capacity of the public charter school. If so stated in its petition, a new public charter school may include within this priority group the children of full-time employees, subject to the provisions of Section 33-5205(3)(k), Idaho Code. (~~4-11-06~~)(8-16-12)T

**b.** Second, to siblings of pupils already selected by the lottery or other random method. (4-11-06)

**c.** Third, to prospective students residing in the attendance area of the public charter school. (4-11-06)

**d.** Fourth, an equitable selection process, such as by lottery or other random method. (4-11-06)

**07. Priority of Preferences for Subsequent Enrollment Periods.** If a public charter school determines to establish admission preferences for enrollment of students in a public charter school in subsequent school years, then the selection hierarchy with respect to such preferences shall be as follows: (4-11-06)

**a.** First, to pupils returning to the public charter school in the second or any subsequent year of operation. Returning students are automatically enrolled in the appropriate grade and do not need to be selected by a random selection method. (4-11-06)

**b.** Second, to children of founders, provided that this admission preference shall be limited to not more than ten percent (10%) of the capacity of the public charter school. If so stated in its petition, a public charter school may include within this priority group the children of full-time employees and/or children withdrawn from the public charter school within the previous three (3) years as a result of the relocation of a parent or guardian due to an academic sabbatical, employer or military transfer or reassignment, subject to the provisions of Section 33-5205(3)(k)(i-ii), Idaho Code. (~~4-11-06~~)(8-16-12)T

**c.** Third, to siblings of pupils already enrolled in the public charter school. (4-11-06)

**d.** Fourth, to prospective students residing in the attendance area of the public charter school. (4-11-06)

**e.** Fifth, an equitable selection process, such as by lottery or other random method. (4-11-06)

**08. Proposed Attendance List for Lottery.** Each year the public charter school shall create an attendance list containing the names of all prospective students on whose behalf a written request for admission was timely received by the public charter school, separated by grade level. In addition, the proposed attendance list shall contain columns next to the name of each student, in which the public charter school will designate admission preferences applicable to each prospective student. The columns shall be designated “A” for returning student preference; “B” for founders preference; “C” for sibling preference, with a corresponding cross-reference to each of the siblings of the prospective student; and “D” for attendance area preference. (4-11-06)

**09. Equitable Selection Process.** If the initial capacity of a public charter school is insufficient to enroll all prospective students, or if capacity is insufficient to enroll all prospective students in subsequent school years, then the public charter school shall determine the students who will be offered admission to the public charter school by conducting a fair and equitable selection process. The selection procedure shall be conducted as follows: (4-11-06)

**a.** The name of each prospective student on the proposed attendance list shall be individually affixed to or written on a three by five (3 x 5) inch index card. The index cards shall be separated by grade. The selection procedure shall be conducted one (1) grade level at a time, with the order for each grade level selected randomly. The index cards containing the names of the prospective students for the grade level being selected shall be placed into a single container. (4-11-06)

**b.** A neutral, third party shall draw the grade level to be completed first and then draw each index card from the container for that grade level, and such person shall write the selection number on each index card as drawn, beginning with the numeral “1” and continuing sequentially thereafter. In addition, after selecting each index card, the name of the person selected will be compared to the proposed attendance list to determine whether any preferences are applicable to such person. (4-11-06)

**c.** If the name of the person selected is a returning student, then the letter “A” shall be written on such index card. If the name of the person selected is the child of a founder, the letter “B” shall be written on such index card. If the name of the person selected is the sibling of another student that has already been selected for admission to the public charter school, then the letter “C” shall be written on such index card. If the name of the person selected resides in the attendance area of the public charter school, then the letter “D” shall be written on such index card. (4-11-06)

**d.** With regard to the sibling preference, if the name of the person selected has a sibling *in a higher grade* who has already been selected, but the person previously selected did not have the letter “C” written on his or her index card (because a sibling had not been selected for admission prior to the selection of the index card of that person), then the letter “C” shall now be written on that person’s index card at this time. ~~(4-11-06)~~(8-16-12)T

**e.** With regard to the founder’s preference, a running tally shall be kept during the course of the selection procedure of the number of index cards, in the aggregate, that have been marked with the letter “B.” When the number of index cards marked with the letter “B” equals ten percent (10%) of the proposed capacity of the public charter school for the school year at issue, then no additional index cards shall be marked with the letter “B,” even if such person selected would otherwise be eligible for the founders preference. (4-11-06)

**f.** After all index cards have been selected for each grade, then the index cards shall be sorted for each grade level in accordance with the following procedure. All index cards with the letter “A” shall be sorted first, based on the chronological order of the selection number written on each index card; followed by all index cards with the letter “B,” based on the chronological order of the selection number written on each index card; followed by all index cards with the letter “C,” based on the chronological order of the selection number written on each index card; followed by all index cards with the letter “D,” based on the chronological order of the selection number written on each index card; followed, finally, by all index cards containing no letters, based on the chronological order of the selection number written on each index card. (4-11-06)

**g.** After the index cards have been drawn and sorted for all grade levels, the names shall be transferred by grade level, and in such order as preferences apply, to the final selection list. (4-11-06)



**10. Final Selection List.** The names of the persons in highest order on the final selection list shall have the highest priority for admission to the public charter school in that grade, and shall be offered admission to the public charter school in such grade until all seats for that grade are filled. (4-11-06)

**11. Notification and Acceptance Process.** (4-11-06)

**a.** With respect to students selected for admission to the public charter school, within seven (7) days after conducting the selection process, the public charter school shall send an offer letter to the parent, guardian, or other person who submitted a written request for admission on behalf of a student, advising such person that the student has been selected for admission to the public charter school. The offer letter must be signed by such student's parent, or guardian, and returned to the public charter school by the date designated in such offer letter by the public charter school. (4-11-06)

**b.** With respect to a prospective student not eligible for admission to the public charter school, within seven (7) days after conducting the selection process, the public charter school shall send a letter to the parent, guardian, or other person who submitted a request for admission on behalf of such student, advising such person that the prospective student is not eligible for admission, but will be placed on a waiting list and may be eligible for admission at a later date if a seat becomes available. (4-11-06)

**c.** If a parent, guardian, or other person receives an offer letter on behalf of a student and declines admission, or fails to timely sign and return such offer by the date designated in such offer letter by the public charter school, then the name of such student will be stricken from the final selection list, and the seat that opens in that grade will be made available to the next eligible student on the final selection list. (4-11-06)

**d.** If a student withdraws from the public charter school during the school year for any reason, then the seat that opens in that grade will be made available to the next eligible student on the final selection list. (4-11-06)

**12. Subsequent School Years.** The final selection list for a given school year shall not roll over to the next subsequent school year. If the capacity of the public charter school is insufficient to enroll all prospective students during the next subsequent school year, then a new equitable selection process shall be conducted by the public charter school for such school year. (4-11-06)

**13. Admission Procedures for Approved Charter Schools.** All public charter schools must have an admission procedure approved by their authorized chartering entity, which complies with Section 203 of this rule. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**205. REVIEW OF PETITIONS.**

**01. Initial Review of Petition.** Prior to submitting a petition with an authorized chartering entity, petitioners shall submit ~~six~~ one (6) ~~copies~~ of the proposed draft petition to the Department, which shall review the proposed draft petition for the purpose of determining whether it was prepared in accordance with the instructions furnished by, and in the format required by, the Board, and contains the information required by Section 33-5205, Idaho Code. ~~(4-11-06)~~(8-16-12)T

**02. Timeframe for Initial Review.** The Department shall complete the initial review of the proposed draft petition as soon as reasonably practicable after the date the proposed draft petition is received by the Department, but not later than thirty (30) days after receipt. (4-11-06)

**03. Notification of Findings After Initial Review.** The Department shall notify the petitioners promptly in writing describing the results of the initial review of the proposed draft petition, and, if applicable, identify any deficiencies in the proposed draft petition. (4-11-06)

**04. Written Response to Initial Review.** Petitioners shall include a copy of the Department's *initial* ~~final~~ review of the proposed draft petition, and a written response to the findings of such review, with the petition upon submission to an authorized chartering entity. Deficiencies in the petition identified by the Department's initial review shall be addressed in the written response. ~~(4-2-08)~~(8-16-12)T

**05. Substantive Review of Petition.** The substantive review of the merits of a petition by an authorized chartering entity shall be for the purpose of determining whether petitioners have demonstrated compliance with Title 33, Chapter 52, Idaho Code. (4-11-06)

**06. Timeframe for Substantive Review.** An authorized chartering entity must comply with the procedural requirements described in Section 33-5205, Idaho Code. (4-11-06)

**a.** Unless a petition is referred to the Commission as authorized by Section 33-5205(1)(c)(iii), Idaho Code, and as discussed in Subsection 206.01 of these rules, an authorized chartering entity must hold a public hearing not later than ~~sixty~~ **seventy-five (6075)** days after receipt of the petition, for the purpose of considering the merits of the petition, as well as the level of employee and parental support for the proposed public charter school. In the case of a petition being reviewed by the Commission, the public hearing must also include any oral or written comments, if any, from an authorized representative of the school district in which the proposed public charter school would be physically located regarding the merits of the petition and any potential impacts on the school district. ~~(4-11-06)~~(8-16-12)T

**b.** An authorized chartering entity must make a decision on whether to approve the petition within ~~sixty~~ **seventy-five (6075)** days after the date of the public hearing on the merits of the petition. ~~(4-11-06)~~(8-16-12)T

**c.** The authorized chartering entity may unilaterally determine to extend the date by which a decision is required to be made up to an additional ~~sixty~~ **seventy-five (6075)** days if it determines the petition is incomplete. ~~(4-11-06)~~(8-16-12)T

**d.** The Commission and the petitioners may mutually agree to extend the date by which a decision is required to be made on the merits of the petition ~~up to for~~ an additional, ~~ninety (90) days~~ **specified period of time**. ~~(4-11-06)~~(8-16-12)T

**07. If Approved, Charter Is Subject to Limitations on Number of New Charters.** ~~(4-11-06)~~

~~**a.** If a petition is approved, then the authorized chartering entity must promptly prepare for petitioners a written notice of its decision to approve the charter. It shall be the responsibility of the petitioners to provide the Board with this written notice of approval, and with a copy of the final approved petition, in accordance with the procedure described in Section 100 of these rules. (4-11-06)(8-16-12)T~~

~~**b.** The approval of a charter by an authorized chartering entity does not provide the petitioners with any right to begin educational instruction at the public charter school during a particular school year, or in accordance with the terms and conditions of the charter, as such approval is conditioned upon the limitations on the number of new public charter schools that may be approved to begin educational instruction for a school year, as described in Section 100 of these rules. (4-11-06)~~

**08. If Denied, Petitioners May Appeal.** (4-11-06)

**a.** If a petition is denied, then the authorized chartering entity must promptly prepare for petitioners a written notice of its decision to deny the charter. The written decision shall include all of the reasons for the denial, and shall also include a reasoned statement that states or explains the criteria and standards considered relevant by the authorized chartering entity, the relevant contested facts relied upon, and the rationale for the decision based on the applicable statutory provisions and factual information presented to the authorized chartering entity. (4-11-06)

**b.** The petitioners may appeal the decision of the authorized chartering entity, in accordance with the procedures described in Sections 401 through 402 of these rules. (4-11-06)

206. WITHDRAWAL OF PETITION; REFERRAL OF PETITION TO THE COMMISSION.

**01. Referral of Petition by Local Board of Trustees.** A board of trustees of a local school district may refer the petition for consideration to the Commission, as authorized by Section 33-5205(1)(c)(iii), Idaho Code. If a board of trustees of a local school district determines to refer a petition to the Commission, then it shall provide prompt written notice of such decision to the petitioners. In addition, the board of trustees of a local school district must promptly ~~forward the petition and verification that there are thirty (30) signatures from qualified electors from the attendance area to~~ notify the Commission of the referral decision, including all the reasons for referral.

~~(4-11-06)~~(8-16-12)T

**02. Withdrawal by Charter Petitioners.** Notwithstanding, if a board of trustees of a local school district does not refer a petition to the Commission, the charter petitioners may withdraw the petition from the local board of trustees and submit the petition to the Commission for consideration if, within ~~sixty~~ seventy-five (60/75) days after the ~~submission of the~~ petition with is received by the authorized chartering entity, the parties have not reached mutual agreement on the provisions of the petition, after a reasonable and good faith effort.

~~(4-11-06)~~(8-16-12)T

**03. Reasonable and Good Faith Effort.** For purposes of Subsection 206.02 of these rules, the ~~parties~~ authorized chartering entity shall be considered to have established a reasonable and good faith effort to reach mutual agreement on the provisions of the petition if representatives of the ~~parties~~ authorized chartering entity take at least all of the following actions:

~~(4-11-06)~~(8-16-12)T

**a.** The authorized chartering entity must send written notice to petitioners acknowledging receipt of the charter petition and the date of receipt.

(4-11-06)

**b.** The authorized chartering entity posts public notice of a public hearing for the purpose of considering the petition, and such meeting is scheduled to occur not later than ~~sixty~~ seventy-five (60/75) days after receipt of the petition and verification that there are thirty (30) signatures from qualified electors of the attendance area.

~~(4-11-06)~~(8-16-12)T

**c.** Prior to the date the posted public hearing is scheduled, representatives of the authorized chartering entity must conduct a review of the petition and the State Department of Education sufficiency review of the petition, and if immediate concerns with the petition are identified, then written notice must be sent to petitioners identifying the concerns and requesting that said identified concerns be addressed. ~~In the event correspondence is sent to petitioners identifying concerns with the petition, then petitioners must respond in writing to the authorized chartering entity addressing the identified concerns.~~

~~(4-11-06)~~(8-16-12)T

**d.** Either prior to or at the posted public hearing, representatives ~~form from~~ both the authorized chartering entity and petitioners must meet and engage in face-to-face discussions regarding the charter petition.

~~(4-11-06)~~(8-16-12)T

**04. Failure of Authorized Chartering Entity to Make a Good Faith Effort.** If the authorized chartering entity fails to make the good faith effort described in Subsection 206.03 of these rules, the petitioners may withdraw the petition from the local board of trustees and submit the petition to the Commission for consideration, provided the petitioner takes at least all of the following actions:

(8-16-12)T

**a.** The petitioners must provide the authorized chartering entity with a petition that is administratively complete and that has been reviewed by the Department in accordance with Subsection 205 of these rules.

(8-16-12)T

**b.** The petitioners must contact the authorized chartering entity, in writing, to ensure awareness of the timelines for petition review and the petitioners' request for a review of the petition and public hearing to consider the merits of the petition.

(8-16-12)T

**c.** In the event correspondence is sent to the petitioners identifying concerns with the petition, then the petitioners must respond in writing to the authorized chartering entity addressing the identified concerns.

(8-16-12)T

**d.** The petitioners must meet with the authorized chartering entity and engage in face-to-face

discussions regarding the petition, if the authorized chartering entity provides an opportunity to do so. (8-16-12)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**301. AUTHORIZED CHARTERING ENTITY RESPONSIBILITIES.**

**01. Compliance Monitoring.** Notwithstanding Section 300 of these rules, the authorized chartering entity of a public charter school shall be responsible for ensuring that the public charter school operates in accordance with all of the terms and conditions of the charter approved by the authorized chartering entity, as reflected in the final approved petition filed with the Board, and as provided by Section 33-5209(1), Idaho Code. The authorized chartering entity also shall be responsible for ensuring that the public charter school program approved by the authorized chartering entity meets the terms of the charter, complies with the general education laws of the state, unless specifically directed otherwise in Title 33, Chapter 52, Idaho Code, and operates in accordance with the state educational standards of thoroughness as defined in Section 33-1612, Idaho Code, as provided in Section 33-5210(2), Idaho Code. (4-11-06)

**02. Written Notice of Defect.** If an authorized chartering entity has reason to believe that a public charter school has committed any defect identified in Subsections 33-5209(2)(a) through (e), Idaho Code, then the authorized chartering entity shall provide the public charter school with prompt written notice of such defect, and shall provide the public charter school a reasonable opportunity to cure such defect. (4-11-06)

**03. Corrective Action Plan.** The public charter school shall provide the authorized chartering entity with a corrective action plan describing the public charter school's plan to cure the defect. The corrective action plan shall describe in detail the terms and conditions by which the public charter school will cure the defect at issue, including a reasonable time frame for completion. ~~The public charter school shall send a copy of the corrective action plan to the Board.~~ (4-11-06)(8-16-12)T

**04. Failure to Cure.** If a public charter school fails to comply with the terms and conditions of the corrective action plan and to cure the defect at issue within a reasonable time, then the authorized chartering entity may provide notice to the public charter school of its intent to revoke the charter, as permitted by Section 33-5209(3), Idaho Code, and in accordance with Section 303 of these rules. (4-11-06)

**302. CHARTER REVISIONS.**

The governing board of a public charter school may reasonably request that its authorized chartering entity revise its charter, as authorized by Section 33-5209(1), Idaho Code. (4-11-06)

**01. Request for Revision.** The governing board of a public charter school that desires to revise its charter must submit a written request describing the proposed revisions with the public charter school's authorized chartering entity. In addition, the governing board of the public charter school shall also submit ~~six~~ one (61) copies of the proposed revisions to the Department, which shall review the proposed revisions in the same manner that it reviews a proposed draft petition, as described in Section 204 of these rules. The Department shall complete its review of the proposed charter revisions not later than thirty (30) days after receipt, and shall notify the governing board of the public charter school and the authorized chartering entity promptly in writing describing the results of such review. (4-11-06)(8-16-12)T

**02. Limited Review.** The authorized chartering entity shall only be permitted to review and consider the proposed revisions to the charter, and shall not have authority to make other charter revisions that are not requested by the public charter school. (4-11-06)

**03. Procedure for Reviewing Request for Charter Revision.** The authorized chartering entity shall have ~~thirty~~ seventy-five (3075) days from the date of receipt of the written notice from the Department in which to issue its decision on the request for charter revision. The authorized chartering entity shall consider the request for charter revision at its next regular meeting following the date of receipt of the written notice from the Department, provided that the request is submitted no fewer than thirty (30) days an advance of that meeting. If permitted by

applicable policies and procedures adopted by the authorized chartering entity, the review of a request for a charter revision may be delegated to appropriate staff employed by the authorized chartering entity. An authorized chartering entity may, but is not required to, conduct a public hearing to consider the request for charter revision.

~~(4-11-06)~~(8-16-12)T

**04. Approval of Proposed Charter Revision.** If the authorized chartering entity approves the proposed charter revision, a copy of such revision shall be executed by each of the parties to the charter contract and shall be treated as either a supplement to, or amendment of, the final approved petition, whatever the case may be. ~~The governing board of the public charter school shall be responsible for sending a copy of the charter revision to the Board, as required by Subsection 100.02 of these rules.~~

~~(4-11-06)~~(8-16-12)T

**05. Denial of Proposed Charter Revision.** If the proposed revision is denied, then the authorized chartering entity must prepare a written notice of its decision denying the request for charter revision. The decision to deny a request for a charter revision shall contain all of the reasons for the decision. The public charter school may appeal the decision denying the request for charter revision to the Board. The provisions of Section 403 of these rules shall govern the appeal.

(4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**402. APPEAL TO THE BOARD RELATING TO THE DENIAL OF A REQUEST TO FORM A NEW PUBLIC CHARTER SCHOOL.**

The following procedures shall govern an appeal to the Board of the final decision of an authorized chartering entity relating to the denial of a petition to form a new public charter school.

(4-11-06)

**01. Submission of Appeal.** The petitioners/appellants shall submit a notice of appeal in writing with the Board that describes, in detail, all of the grounds for the appeal, and the remedy requested, within twenty-one (21) days from the date the authorized chartering entity issues its final decision to deny a petition to form a new public charter school. A copy of the notice of appeal shall be submitted to the authorized chartering entity. In addition, contemporaneous with the submission of the notice of appeal, the petitioners/appellants shall also submit to the Board, two (2) copies of a complete record of all actions taken with respect to the consideration of the public charter school petition. The record must be in chronological order, must be tabbed and indexed, and must contain, at a minimum, the following documents:

(4-11-06)

**a.** The complete record submitted to the Department, as provided in Subsection 401.01.a. through 401.01.e. of these rules.

(4-11-06)

**b.** A transcript, prepared by a neutral person whose interests are not affiliated with a party to the appeal, of the recorded public hearing conducted by the hearing officer, as described in Subsection 401.06 of these rules.

(4-11-06)

**c.** A copy of the hearing officer's recommendation.

(4-11-06)

**d.** Copies of audio or video recordings, if any, and the minutes of the public hearing conducted by the authorized chartering entity to consider the recommendation of the hearing officer, as described in Subsection 401.08.a. through 401.08.c. of these rules.

(4-11-06)

**e.** Copies of any additional correspondence between the petitioners/appellants and the authorized chartering entity relating to the petition subsequent to the public hearing conducted by the Department.

(4-11-06)

**f.** The final written decision provided by the authorized chartering entity to the petitioners/appellants.

(4-11-06)

**02. Public Hearing.** A public hearing to review the final decision of the authorized chartering entity shall be conducted within a reasonable time from the date that the Board receives the notice of appeal, but not later

than sixty (60) calendar days from such date. The public hearing shall be for the purpose of considering all of the materials in the record that were presented at prior proceedings. However, new evidence, testimony, documents, or materials that were not previously considered at prior hearings on the matter may be accepted or considered, in the sole reasonable discretion of the Board, or of the charter appeal committee or public hearing officer, as described in Subsection 402.04 of this rule. (4-11-06)

**03. Notice of Hearing.** All parties in an appeal shall be notified of a public hearing at least ten (10) days in advance, or within such time period as may be mandated by law. The notice shall identify the time and place of the hearing; a statement of the legal authority under which the hearing is to be held; the particular sections of the statutes and any rules involved; the issues involved; and the right to be represented. The notice shall identify how and when documents for the hearing will be provided to all parties. (4-11-06)

**04. Appointment of Charter Appeal Committee or Public Hearing Officer.** The Board may, in its reasonable discretion, determine to appoint a charter appeal committee, composed solely of Board members, or a combination of Board members and Board staff, or alternatively, to appoint a public hearing officer, for the purpose of conducting the public hearing. If the Board determines not to make such an appointment, then the Board shall conduct the public hearing. (4-11-06)

**05. Recommended Findings.** If the public hearing is conducted by a charter appeal committee or appointed public hearing officer, then such committee or appointed public hearing officer shall forward to the Board all materials relating to the hearing as soon as reasonably practicable after the date of the public hearing. If so requested by the Board, the entity conducting the public hearing may prepare recommended findings for the Board to consider. The recommended findings shall include specific findings on all major facts at issue; a reasoned statement in support of the recommendation; all other findings and recommendations of the charter appeal committee or public hearing officer; and a recommended decision affirming or reversing the decision of the authorized chartering entity, or such other action recommended by the charter appeal committee or public hearing officer, such as remanding the matter back to the authorized chartering entity, or redirecting the petition to another authorized chartering entity. A copy of the recommended findings shall be mailed or delivered to all the parties. (4-11-06)

**06. Final Decision and Order by the Board.** The Board shall consider the materials forwarded by the entity conducting the public hearing, including any recommended findings of the charter appeal committee or appointed public hearing officer, as may be applicable, in a meeting open to the public at the next regularly scheduled meeting of the Board that occurs after the public hearing. If the public hearing was not conducted by the Board, then the Board may allow representatives for both the petitioner/appellant and the authorized chartering entity an opportunity to deliver oral arguments to the Board advocating their respective positions, limited to thirty (30) minutes for each party. Whether the public hearing is conducted by the Board or by a charter appeal committee, the Board shall issue a final written decision on such appeal within sixty (60) days from the date of the public hearing. The final decision and order of the Board shall be sent to both the petitioners/appellants and the authorized chartering entity, and will not be subject to reconsideration. With respect to such written decision, the Board may take any of the following actions: (4-11-06)

**a.** Approve the charter, if the Board determines that the authorized chartering entity failed to appropriately consider the charter petition, or if it acted in an arbitrary manner in denying the request. In the event the Board approves the charter, the charter shall operate under the jurisdiction of the Commission, as provided by Section 33-5207(6), Idaho Code. (4-11-06)

**b.** Remand the petition back to the authorized chartering entity for further consideration with directions or instructions relating to such further review. If the authorized chartering entity further considers the matter and again denies the petition, then that decision is final and there shall be no further appeal. ~~(4-11-06)~~(8-16-12)T

**c.** Redirect the petition for consideration ~~to another authorized chartering entity~~ by the Commission, if the appeal is regarding a denial decision made by the board of trustees of a local school district. ~~(4-11-06)~~(8-16-12)T

**d.** Deny the appeal submitted by the petitioners/appellants. (4-11-06)

**403. APPEAL RELATING TO THE DENIAL OF A REQUEST TO REVISE A CHARTER OR A CHARTER REVOCATION DECISION.**

The following procedures shall govern an appeal relating to the denial of a request to revise a charter or a charter revocation decision. (4-11-06)

**01. Submission of Appeal.** The public charter school shall submit a notice of appeal in writing to the Board that describes, in detail, all of the grounds for the appeal, and the remedy requested, within thirty (30) days from the date of the written decision of the authorized chartering entity to revoke a charter or to deny a charter revision. A copy of the notice of appeal shall be submitted to the authorized chartering entity. In addition, contemporaneous with the submission of the notice of appeal, the appellant charter school shall also submit to the Board eleven (11), three (3)-holed punched, copies of the complete record of all actions taken with respect to the matter being appealed. The record must be in chronological order and must be appropriately tabbed and indexed. The record must contain, at a minimum, all of the following documents: (4-11-06)

**a.** The name, address, and telephone number of the appellant public charter school and the authorized chartering entity that issued the decision being appealed. (4-11-06)

**b.** Copies of all correspondence or other documents between the appellant public charter school and the authorized chartering entity relating to the matter being appealed. (4-11-06)

**c.** Copies of audio or video recordings, if any, and the minutes from all meeting(s) where the matter on appeal was considered or discussed. (4-11-06)

**d.** The written decision provided by the authorized chartering entity to the appellant public charter school. (4-11-06)

**02. Public Hearing.** A public hearing to review the decision of the authorized chartering entity shall be conducted within thirty (30) days after the date of the filing of the notice of appeal. (4-11-06)

**03. Notice of Hearing.** All parties in an appeal shall be notified of a public hearing at least ten (10) days in advance, or within such time period as may be mandated by law. The notice shall identify the time and place of the hearing; a statement of the legal authority under which the hearing is to be held; the particular sections of the statutes and any rules involved; the issues involved; and the right to be represented. The notice shall identify how and when documents for the hearing will be provided to all parties. (4-11-06)

**04. Appointment of Charter Appeal Committee or Public Hearing Officer.** The Board may, in its reasonable discretion, determine to appoint a charter appeal committee, composed solely of Board members, or a combination of Board members and Board staff, or alternatively, to appoint a public hearing officer, for the purpose of conducting the public hearing. If the Board determines not to make such an appointment, then the Board shall conduct the public hearing. (4-11-06)

**05. Prehearing Conference.** The entity conducting the public hearing may, upon written or other sufficient notice to all interested parties, hold a prehearing conference to formulate or simplify the issues; obtain admissions or stipulations of fact and documents; identify whether there is any additional information that had not been presented to the authorized chartering entity; arrange for exchange of any proposed exhibits or prepared expert testimony; limit the number of witnesses; determine the procedure at the hearing; and to determine any other matters which may expedite the orderly conduct and disposition of the proceeding. (4-11-06)

**06. Hearing Record.** The hearing shall be recorded unless a party requests a stenographic recording by a certified court reporter, in writing, at least seven (7) days prior to the date of the hearing. Any party requesting a stenographic recording by a certified court reporter shall be responsible for the costs of same. The record shall be transcribed at the expense of the party requesting a transcript, and prepayment or guarantee of payment may be required. Once a transcript is requested, any party may obtain a copy at the party's own expense. (4-11-06)

**07. Recommended Findings.** If the public hearing is conducted by a charter appeal committee or appointed public hearing officer, then such committee or public hearing officer shall forward to the Board all materials relating to the hearing as soon as reasonably practicable after the date of the public hearing. If so requested

by the Board, the entity conducting the public hearing may prepare recommended findings for the Board to consider. The recommended findings shall include specific findings on all major facts at issue; a reasoned statement in support of the recommendation; all other findings and recommendations of the charter appeal committee or public hearing officer; and a recommended decision affirming, or reversing the action or decision of the authorized chartering entity. A copy of the recommended findings shall be mailed or delivered to all the parties. (4-11-06)

**08. Final Decision and Order by the Board.** The Board shall consider the materials forwarded by the entity conducting the public hearing, including any recommended findings of the charter appeal committee or appointed public hearing officer, as may be applicable, in a meeting open to the public at the next regularly scheduled meeting of the Board that occurs after the public hearing. If the public hearing was not conducted by the Board, then the Board may allow representatives for both the appellant public charter school and the authorized chartering entity an opportunity to deliver oral arguments to the Board advocating their respective positions, limited to thirty (30) minutes for each party. Whether the public hearing is conducted by the Board, or by a charter appeal committee or appointed public hearing officer, the Board shall issue a final written decision on such appeal within sixty (60) days from the date of the public hearing. The decision shall be sent to both the appellant public charter school and the authorized chartering entity. With respect to such written decision, the Board may take any of the following actions: (4-11-06)

**a.** Grant the appeal and reverse the decision of the authorized chartering entity if the Board determines that the authorized chartering entity failed to appropriately consider the revocation of the charter, or the request to revise the charter, or that the authorized chartering authority acted in an arbitrary manner in determining to revoke the charter, or in denying the request to revise the charter. (4-11-06)

**b.** Remand the matter back to the authorized chartering ~~authority~~ entity for further consideration with directions or instructions relating to such further review. If the authorized chartering entity further considers the matter and again denies the petition, then that decision is final and there shall be no further appeal. ~~(4-11-06)~~(8-16-12)T

~~**c.** Redirect the matter for consideration to another authorized chartering entity. (4-11-06)~~

~~**d.** Deny the appeal filed by the appellants. (4-11-06)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**500. MISCELLANEOUS.**

**01. Definition of LEA.** As used in Section 500 of these rules, the term “local education agency” or “LEA” shall mean a public authority legally constituted within the state for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in the state, as such term is defined in the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, and as such term is further defined in 34 CFR 300.18. (4-11-06)

**02. LEA Designations.** Section 33-5203(7), Idaho Code, provides that the Board shall be responsible to designate those public charter schools that will be identified as an LEA; however, only public charter schools chartered by the board of trustees of a school district may be included in that district’s LEA. A public charter school may request to be designated as an LEA. Such request shall be in writing and must be submitted to the executive director of the Board. In addition, such request shall state the reasons why the public charter school is requesting LEA status, and must include, at a minimum, the following: (4-11-06)

**a.** Verification that the public charter school is a public virtual school under Idaho law (if applicable). (4-11-06)

**b.** A description of the federal programs for which the public charter school will seek funding, and a detailed discussion of the projected financial impact (positive or negative) to the public charter school if it is



designated an LEA. (4-11-06)

- c. A discussion of how the public charter school will administer the ISAT tests to its students. (4-11-06)

**03. Criteria.** The executive director of the Board shall have the authority to designate a public charter school as an LEA, in accordance with the following criteria: (4-11-06)

a. A public charter school that is chartered by the board of trustees of a school district shall be included in that district's LEA, and the executive director of the Board shall not be permitted to designate such a school as an LEA, ~~except as discussed in Subsection 500.03 of these rules.~~ (4-11-06)(8-16-12)T

~~b. A public virtual school that is chartered by the board of trustees of a school district may be designated as an LEA, if the executive director determines, in his reasonable discretion, that the public virtual school has demonstrated a compelling reason for such designation in its written request and any supporting materials.~~ (4-11-06)

**eb.** A public charter school that is chartered by the Commission must be designated by the executive director as an LEA, but will still be required to submit a written request pursuant to Subsection 500.02 of these rules. (4-11-06)

**04. Referral to the Board.** The executive director may determine to refer any request for LEA designation described in Section 500 of these rules to the Board for consideration, including any request submitted by a public charter school that is not eligible under the criteria contained herein. (4-11-06)

**05. Review.** A public charter school may appeal to the Board a decision made by the executive director of the Board to deny a request to be designated an LEA. (4-11-06)

**06. Timeframe for LEA Request.** A request for LEA status must be received no later than February 1 in order for any such designation to be effective for the following school year. (4-11-06)

**IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION**

**08.03.01 - RULES OF THE PUBLIC CHARTER SCHOOL COMMISSION**

**DOCKET NO. 08-0301-1201**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is August 16, 2012.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 33-105 and 33-5212, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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 State Board of Education will be considering changes to IDAPA 08.03.01, "Rules Governing Public Charter Schools," intended to improve administrative efficiency and update the rule to correspond with statutory amendments.

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

To come into compliance with amendments made to Chapter 52, Title 33, Idaho Code made during the 2012 legislative session.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2012 Idaho Administrative Bulletin, [Volume 12-7, page 41](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Tracie Bent, Chief Planning and Policy Officer, at (208)332-1582 or [tracie.bent@osbe.idaho.gov](mailto:tracie.bent@osbe.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24th, 2012.

DATED this 31st day of August, 2012.

Tracie Bent  
Chief Planning and Policy Officer  
Office of the State Board of Education  
650 W State St.

PO Box 83720  
Boise, ID 83720-0037  
phone: (208)332-1582  
fax: (208)334-2632

THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 08-0301-1201

**300. PETITION -- SUBMISSION.**

**01. Number of Copies.** Petitioners shall submit a petition consisting of an ~~unbound original application package and twelve (12) unbound, three (3) hole punched, copies of the application package to the Commission and an~~ electronic copy of the petition in Microsoft® Word format. Appendices to the petition must be submitted as a single document in Adobe® format (PDF). ~~(4-11-06)~~(8-16-12)T

**02. Case Number.** The Commission will assign a case number to a petition. Any future documents or correspondence submitted to the Commission after original filing must reference the assigned case number. (4-11-06)

**03. Administratively Complete.** If the petition is not administratively complete when received, the Commission shall provide the petitioner notice of the deficiency, which identifies the missing documents and information. Administratively complete means the petition contains all of the information and documents required by Title 33, Chapter 52, Idaho Code, and IDAPA 08.02.04, "Rules Governing Public Charter Schools." (4-11-06)

**04. Considered Received.** A petition is considered received by the Commission when it is presented to the Commission at the first scheduled meeting after the petition is filed and the petition is administratively complete. (4-11-06)

**05. Supplemental Information.** Submission of supplemental information to the Commission shall be accomplished by filing ~~only the pages being amended~~ a complete, electronic copy of the petition, with the text to be removed stricken and the new language underlined, with the ~~page number of the page to be replaced at the bottom center of the page and the month and year~~ date of revision ~~in the bottom left hand corner of the page~~ noted on the title page. ~~(4-11-06)~~(8-16-12)T

**06. Sufficiency Review.** Petitioners shall submit a copy of the State Department of Education's sufficiency review, which is required by IDAPA 08.02.04, "Rules Governing Public Charter Schools," Subsection 200.03, and any related documents addressing the deficiencies, if any, at the time the petition is filed with the Commission. (4-11-06)

**07. School District Comments.** If applicable, school districts may provide comments of the school district where the public charter school will be physically located. (4-11-06)

**301. COMPLIANCE MONITORING.**

The Commission shall be responsible for ensuring the public charter school operates in accordance with all of the terms and conditions of the approved charter, including compliance with all applicable federal and state education standards and all applicable state and federal laws, rules and regulations, and policies. See IDAPA 08.02.04, "Rules Governing Public Charter Schools," Subsection 301.01. Commission staff will make a site visit and verify the existence of the following documents after the charter is granted: (4-11-06)

**01. Certificate of Occupancy.** Certificate of Occupancy for the public charter school site ~~no later than thirty (30) days prior to the opening of the school;~~ ~~(4-11-06)~~(8-16-12)T

**02. Building Inspection Reports.** A copy of the inspection report from the Idaho Division of Building Safety ~~to be submitted no later than thirty (30) days before the school initially opens and then within seven (7) days of receipt, thereafter;~~ ~~(4-11-06)~~(8-16-12)T

**03. Lease Agreement.** ~~If school structures are being leased, a copy of the lease agreement for the building(s) at which students will be taught;~~ ~~(4-11-06)~~

**04. Fire Marshal Report.** A fire marshal report for the public charter school site; (4-11-06)

- ~~05.~~ **Financial Statements.** Audited financial statements from an independent auditor must be submitted as required by Section 33-701, Idaho Code; (4-11-06)
- ~~06.~~ **Reports.** Copies of the following reports within five (5) business days of said reporting being submitted; (4-11-06)
- ~~a.~~ All reports submitted to the State Department of Education including, but not limited to, the Idaho Basic Education Data System ("IBEDS"); (4-11-06)
- ~~b.~~ All reports submitted to the Board; and (4-11-06)
- ~~c.~~ All reports submitted to federal education agencies including, but not limited to, reports required by the No Child Left Behind Act and the Individuals with Disabilities Education Act. (4-11-06)
- ~~07.~~ **Accreditation Reports.** A copy of the public charter school's accreditation report must be submitted within five (5) business days of receipt. See Section 33-5206(7), Idaho Code; (4-11-06)
- ~~08.~~ **Complaints.** Copies of any complaints filed against the public charter school including, but not limited to, lawsuits and complaints filed with the Idaho Professional Standards Commission relating to school employees, within five (5) business days of receipt; (4-11-06)
- 094.** **Insurance Binders.** Copies of insurance binders from a company authorized to do business in Idaho for a liability policy, a property loss policy, worker's compensation insurance, unemployment insurance, and health insurance ~~no later than thirty (30) days prior to the opening of school and thereafter, thirty (30) days before the expiration of the insurance policies;~~ (4-11-06)(8-16-12)T
- ~~10.~~ **Board Members.** A current list of all public charter school board members, including full name, address, telephone number, and resume must be on file with the Commission within five (5) business days of any changes; (4-11-06)
- ~~11.~~ **Goals Attainment.** Reporting to be submitted by the close of the school year demonstrating the students' level of attainment of the established skills and knowledge specified as goals in the public charter school's educational program. See Section 33-5206(7), Idaho Code; (4-11-06)
- ~~12.~~ **Programmatic Operations Audit.** An audit of the programmatic operations of the public charter school as required by Section 33-5205(3)(k), Idaho Code, must be submitted no later than October 15th for the previous school year. See Section 33-5206(7), Idaho Code; (4-11-06)
- ~~1305.~~ **Health District Inspection Certificate.** A copy of the health certificate issued by the health district for each site at which students will be taught; (4-11-06)
- ~~14.~~ **Proof of Compliance.** Proof the public charter school board is in compliance with all federal, state, and local rules, regulations, and statutes relating to education, health, safety, and insurance at least thirty (30) days before the first day of operation of the public charter school for each school year; (4-11-06)
- ~~1506.~~ **Criminal History Checks.** A copy of the criminal history checks for all employees as required by Sections 33-130 and 33-5210(4)(d), Idaho Code, ~~no later than thirty (30) days prior to the first day of school;~~ (4-11-06)(8-16-12)T
- ~~1607.~~ **Instructional Staff Certification.** Proof of certification for all instructional staff employed by the public charter school ~~must be submitted no later than thirty (30) days prior to the first day of school;~~ and (4-11-06)(8-16-12)T
- ~~1708.~~ **School Calendar.** ~~Daily schedule, and instructional hours. Ninety (90) days before the commencement of each school year, documentation must be submitted to the Commission detailing~~ The school's calendar for the school year, daily schedule, and documentation of the appropriate number of instructional hours for students at each grade level. (4-11-06)(8-16-12)T

**302. REQUIRED DOCUMENTS PUBLIC CHARTER SCHOOLS AUTHORIZED BY THE COMMISSION MUST SUBMIT TO THE COMMISSION.**

**01. Lease Agreement.** If school structures are leased, a copy of the lease agreement for the building(s) at which students will be taught; (8-16-12)T

**02. Financial Statements.** Audited financial statements from an independent auditor must be submitted as required by Section 33-701, Idaho Code; (8-16-12)T

**03. Accreditation Reports.** A copy of the public charter school's accreditation report as required by Section 33-5206(7), Idaho code, must be submitted within five (5) business days of receipt; (8-16-12)T

**04. Complaints.** Copies of any complaints filed against the public charter school including, but not limited to, lawsuits and complaints filed with the Idaho Professional Standards Commission relating to school employees, within five (5) business days of receipt; (8-16-12)T

**05. Board Members.** A current list of all public charter school board members, including full name, address, telephone number, and resume must be on file with the Commission within five (5) business days of any changes; (8-16-12)T

**06. Goals Attainment.** A report, as required by Section 33-5206(7), Idaho Code, by the close of the school year demonstrating the students' level of attainment of the established skills and knowledge specified as goals in the public charter school's educational program and measurable student educational standards in the approved charter; (8-16-12)T

**07. Programmatic Operations Audit.** An audit of the programmatic operations of the public charter school as required by Section 33-5205(3)(l), Idaho Code, must be submitted no later than August 15th for the previous school year. (8-16-12)T

**08. Proof of Compliance.** Additional proof of compliance as reasonably requested by the Commission. (8-16-12)T

**3023.** -- 399. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

**401. PETITION -- FORMAT.**

All petitions submitted to the Commission must be in the following format. Information will only be considered if it is located in the correct Section. (4-11-06)

- 01. Cover Page.** The cover page must include the following information: (4-11-06)
- a. Name of proposed charter school; (4-11-06)
  - b. School year petitioning to open the school; (4-11-06)
  - c. Name of the school district affected by the attendance area; (4-11-06)
  - i. Where the public charter school building will be physically located; or (4-11-06)
  - ii. If it is a virtual school and the physical location of the main office; and (4-11-06)
  - d. Name, address, telephone number, *fax number*, and e-mail address of the petitioner's authorized

representative.

~~(4-11-06)~~(8-16-12)T

**02. Table of Contents.** The second page shall be the beginning of the table of contents. (4-11-06)

**03. Tab 1.** ~~(4-11-06)~~

~~**a.** Copies of articles of incorporation, file stamped by the Idaho Secretary of State's Office; and of the signed bylaws adopted by the board of directors of the nonprofit corporation. See Section 33-5204(1), Idaho Code. (4-11-06)~~

~~**b.** Signatures of at least thirty (30) qualified electors of the proposed charter school's service area. Proof of qualification of electors must be attached. See Section 33-5205(1)(a), Idaho Code. (4-11-06)~~

~~**e.** Mission and vision statements. (4-11-06)(8-16-12)T~~

**04. Tab 2.** The petitioner's information regarding the proposed operation and potential effects of the public charter school including, but not limited to, the facilities to be utilized by the public charter school, the manner in which administrative services of the public charter school are to be provided, and the potential civil liability effects upon the public charter school and upon the authorized chartering entity. See Section 33-5205(4), Idaho Code. (4-11-06)

**05. Tab 3.** (4-11-06)

**a.** A description of the public charter school's educational program and goals, including how each of the educational thoroughness standards, as defined in Section 33-1612, Idaho Code, shall be fulfilled. See Section 33-5205(3)(a), Idaho Code. (4-11-06)

**b.** A description of what it means to be an "educated person" in the twenty-first century, and how learning best occurs. See Section 33-5205(3)(a), Idaho Code. (4-11-06)

**c.** The manner by which special education services will be provided to students with disabilities who are eligible pursuant to the federal Individuals with Disabilities Education Act. See Section 33-5205(3)(q), Idaho Code. (4-11-06)

**d.** The plan for working with parents who have students who are dually enrolled pursuant to Section 33-203(7), Idaho Code. See Section 33-5205(3)(r), Idaho Code. (4-11-06)

**06. Tab 4.** (4-11-06)

**a.** The measurable student educational standards the public charter school will use. See Section 33-5205(3)(b), Idaho Code. (4-11-06)

**b.** The method by which student progress in meeting the identified student educational standards is to be measured. See Section 33-5205(3)(c), Idaho Code. (4-11-06)

**c.** A provision by which students of the public charter school will be tested with the same standardized tests as other Idaho public school students. See Section 33-5205(3)(d), Idaho Code. (4-11-06)

**d.** A provision that ensures that the public charter school shall be state accredited as provided by rule of the Board. See Section 33-5205(3)(e), Idaho Code, and IDAPA 08.02.02, "Rules Governing Uniformity," Section 140. (4-11-06)

**e.** A provision describing the school's plan if it is ever identified as an in need of improvement school as outlined in the No Child Left Behind Act. (4-11-06)

**07. Tab 5.** (4-11-06)

**a.** A description of the governance structure of the public charter school including, but not limited to, the persons or entity who shall be legally accountable for the operation of the public charter school. See Section 33-5205(3)(f), Idaho Code. (4-11-06)

**b.** A description of the ethical standards to which the governing board of the public charter school will adhere. (8-16-12)T

**c.** A plan for the initial and ongoing training of the governing board of the public charter school. (8-16-12)T

**d.** The process to be followed by the public charter school to ensure parental involvement. See Section 33-5205(3)(f), Idaho Code. (4-11-06)

**ee.** The manner in which an annual audit of the financial and programmatic operations of the public charter school will be conducted. See Section 33-5205(3)(k), Idaho Code. (4-11-06)

**08. Tab 6.** (4-11-06)

**a.** The qualifications to be met by individuals employed by the public charter school. This should include a requirement for all staff members to submit to a criminal history check, as required by Section 33-130, Idaho Code, and that all instructional staff shall be certified teachers, as required by the Board. See Section 33-5205(3)(g), Idaho Code. (4-11-06)

**b.** The procedures that the public charter school will follow to ensure the health and safety of students and staff. See Section 33-5205(3)(h), Idaho Code. (4-11-06)

**c.** A provision which ensures that all staff members of the public charter school will be covered by the public employee retirement system, federal social security, unemployment insurance, worker's compensation insurance, and health insurance. See Section 33-5205(3)(m), Idaho Code. (4-11-06)

**d.** A description of the transfer rights of any employee choosing to work in a public charter school authorized by the Commission and the rights of such employees to return to any public school in the school district after employment at such public charter school. See Section 33-5205(3)(o), Idaho Code. (4-11-06)

**e.** A provision that ensures that the staff of the public charter school shall be considered a separate unit for purposes of collective bargaining. See Section 33-5205(3)(p), Idaho Code. (4-11-06)

**f.** A statement that all teachers and administrators will be on written contract as required by Section 33-5206(4), Idaho Code. (4-11-06)

**09. Tab 7.** (4-11-06)

**a.** Admission procedures, including provision for over enrollment. See Section 33-5205(3)(j), Idaho Code, and IDAPA 08.02.04, "Rules Governing Public Charter Schools," Section 203. (4-11-06)

**b.** The disciplinary procedures that the public charter school will utilize, including the procedure by which students, including special education students, may be suspended, expelled, and reenrolled. See Section 33-5205(3)(l), Idaho Code. (4-11-06)

**c.** The procedures required by Section 33-210, Idaho Code, for students using or under the influence of alcohol or controlled substances. (4-11-06)

**d.** The public school attendance alternative for students residing within the school district who choose not to attend the public charter school. See Section 33-5205(3)(n), Idaho Code. (4-11-06)

**e.** The process by which the citizens in the area of attendance shall be made aware of the enrollment opportunities of the public charter school. See Section 33-5205(3)(s), Idaho Code. (4-11-06)

- f. A plan for the requirements of Section 33-205, Idaho Code, for the denial of school attendance. See Section 33-5205(3)(i), Idaho Code. (4-11-06)
- g. The student handbook that describes the school rules and the procedure ensuring a student's parent or guardian has access to this handbook. (4-11-06)
- 10. Tab 8.** (4-11-06)
- a. A detailed business plan including: (4-11-06)
- i. Business description, (4-11-06)
- ii. Marketing plan, (4-11-06)
- iii. Management plan, (4-11-06)
- ~~iv. Resumes of the directors of the nonprofit corporation;~~ (4-11-06)
- ~~iv.~~ The school's financial plan, and (4-11-06)(8-16-12)T
- ~~vi. Start-up budget with assumptions form;~~ (4-11-06)
- ~~vii. Three (3)-year operating budget form, and~~ (4-11-06)
- ~~viii. First year month by month cash flow form.~~ (4-11-06)
- v. A pre-opening plan and timeline. (8-16-12)T
- ~~b. The school's budget must be in the Idaho Financial Accounting Reporting Management System (IFARMS) format.~~ (4-11-06)
- ~~eb.~~ A proposal for transportation services with an estimated first year cost as required by Section 33-5208(4), Idaho Code. (4-11-06)
- ~~dc.~~ Plans for a school lunch program, including how a determination of eligibility for free and reduced price meals will be made. (4-11-06)
- 11. Tab 9.** If this is a virtual public charter school, a brief description of how the school meets the definition of a public virtual school as defined by Section 33-5202A(6), Idaho Code. (4-11-06)
- 12. Tab 10.** (4-11-06)
- a. A description of any business arrangements or partnerships with other schools, educational programs, businesses, or nonprofit organizations, ~~and copies of any contracts or lease agreements.~~ (4-11-06)(8-16-12)T
- b. Additional information the petitioners want the authorizing chartering entity to consider as part of the petition. (4-11-06)
- c. A plan for termination of the charter by the board of the public charter school. (4-11-06)
- 13. Appendices.** (8-16-12)T
- a. Copies of articles of incorporation, file-stamped by the Idaho Secretary of State's Office; and of the signed bylaws adopted by the board of directors of the nonprofit corporation; (8-16-12)T



- b.** Signatures of at least thirty (30) qualified electors of the proposed charter school's service area. Proof of qualification of electors must be attached. See Section 33-5205(1)(a), Idaho Code; (8-16-12)T
- c.** Resumes of the directors of the nonprofit corporation, including references; (8-16-12)T
- d.** Copies of any contracts or lease agreements; (8-16-12)T
- e.** Start-up budget with assumptions form and supporting documentation; (8-16-12)T
- f.** Three-year operating budget form; and (8-16-12)T
- g.** First year month-by-month cash flow form. (8-16-12)T
- h.** The school's budget must be in the Idaho Financial Accounting Reporting Management System (IFARMS) format and any other such format as may be reasonably requested by the Commission. (8-16-12)T

## IDAPA 09 - DEPARTMENT OF LABOR

### 09.01.04 - UNEMPLOYMENT INSURANCE BENEFIT FRAUD AND OVERPAYMENT RULES

DOCKET NO. 09-0104-1201

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

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 72-1333, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

There is no change to the pending rule, therefore, it is being adopted as proposed. The complete text of the proposed rule was published in the August 1, 2012 Idaho Administrative Bulletin, [Vol. 12-8, pages 39 and 40](#).

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

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Michael Johnson 332-3570 ext. 3082.

DATED this 5th of September, 2012.

Michael Johnson, Bureau Chief  
Idaho Department of Labor  
317 West Main Street, Boise, Idaho 83735  
Phone 332-3570 ext. 3082 / Fax 334-6125

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#### DOCKET NO. 09-0104-1201 - ADOPTION OF PENDING RULE

No substantive changes have been made to the pending rule.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 12-8, August 1, 2012, pages 39 and 40](#).

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2013 Idaho State Legislature for final adoption.

**IDAPA 09 - DEPARTMENT OF LABOR**

**09.01.30 - UNEMPLOYMENT INSURANCE BENEFITS ADMINISTRATION RULES**

**DOCKET NO. 09-0130-1201**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 72-1333, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

There is no change to the pending rule, therefore, it is being adopted as proposed. The complete text of the proposed rule was published in the August 1, 2012 Idaho Administrative Bulletin, [Vol. 12-8, pages 41 through 43](#).

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

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Michael Johnson 332-3570 ext. 3082.

DATED this 5th of September, 2012.

Michael Johnson, Bureau Chief  
Idaho Department of Labor  
317 West Main Street, Boise, Idaho 83735  
Phone 332-3570 ext. 3082 / Fax 334-6125

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**DOCKET NO. 09-0130-1201 - ADOPTION OF PENDING RULE**

**No substantive changes have been made to the pending rule.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 12-8, August 1, 2012, pages 41 through 43](#).**

**This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2013 Idaho State Legislature for final adoption.**

**IDAPA 09 - DEPARTMENT OF LABOR**

**09.01.35 - UNEMPLOYMENT INSURANCE TAX ADMINISTRATION RULES**

**DOCKET NO. 09-0135-1201**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 72-1333, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

There is no change to the pending rule, therefore, it is being adopted as proposed. The complete text of the proposed rule was published in the August 1, 2012 Idaho Administrative Bulletin, [Vol. 12-8, pages 44 through 49](#).

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

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Michael Johnson 332-3570 ext. 3082.

DATED this 5th of September, 2012.

Michael Johnson, Bureau Chief  
Idaho Department of Labor  
317 West Main Street, Boise, Idaho 83735  
Phone 332-3570 ext. 3082 / Fax 334-6125

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**DOCKET NO. 09-0135-1201 - ADOPTION OF PENDING RULE**

**No substantive changes have been made to the pending rule.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 12-8, August 1, 2012, pages 44 through 49](#).**

**This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2013 Idaho State Legislature for final adoption.**

## IDAPA 11 - IDAHO STATE POLICE

### 11.11.01 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL

#### DOCKET NO. 11-1101-1201

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

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 19-5107, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the August 1, 2012 Idaho Administrative Bulletin, [Vol. 12-8, pages 50 through 56](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact William L. Flink at (208) 884-7251.

DATED this 27th day of August, 2012.

William L. Flink, Division Administrator  
Idaho State Police/Peace Officer Standards & Training  
700 S. Stratford Dr.  
Meridian, ID 83642  
Phone: (208) 884-7251  
Fax: (208) 884-7295

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#### DOCKET NO. 11-1101-1201 - ADOPTION OF PENDING RULE

No substantive changes have been made to the pending rule.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 12-8, August 1, 2012, pages 50 through 56](#).

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2013 Idaho State Legislature for final adoption.

## IDAPA 11 - IDAHO STATE POLICE

### 11.11.01 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL

#### DOCKET NO. 11-1101-1202

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 19-5107, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

Adds emergency services dispatchers to the definition of "law enforcement profession" as used in two-year agreements authorized pursuant to Section 19-5112, Idaho Code. Establishes that an applicant who is the subject of an investigation by an agency with competent authority and jurisdiction is not eligible for POST certification of any kind while under investigation. Allows the POST Division Administrator to extend over one year the validity of an applicant's medical examination under extraordinary conditions and for good cause shown.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 representatives of the affected parties were involved in the drafting and approval of the rule.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Trish Christy at (208) 884-7253.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 14th day of August, 2012.

William L. Flink, Division Administrator  
Idaho State Police/Peace Officer Standards & Training  
700 S. Stratford Dr.  
Meridian, ID 83642  
Phone: (208) 884-7251  
Fax: (208) 884-7295

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-1101-1202

**010. DEFINITIONS.**

- 01. Act.** Title 19, Chapter 51, of the Idaho Code. (4-5-00)
- 02. Adult Probation and Parole Officer.** Any employee of the Idaho Department of Correction who is responsible for the supervision of offenders on probation or parole. (3-30-07)
- 03. Agency.** A law enforcement agency which is a part of or administered by the state or any political subdivision thereof and which is responsible for the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision; a juvenile detention center; a juvenile probation department; the Idaho Department of Correction; or a private prison contractor of the State Board of Correction that is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the facility. (4-2-08)
- 04. Agency Head.** A chief of police of a city, sheriff of a county, or chief administrator of any law enforcement agency of the state of Idaho or any political subdivision thereof who is responsible for the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision; the chief administrator of a juvenile detention center; the chief administrator of a juvenile probation department; the director of the Idaho Department of Correction; or the chief administrator of a private prison contractor of the State Board of Correction that is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the facility. (4-2-08)
- 05. Applicant.** Any person applying to participate in a POST training program or applying for POST certification. (4-2-08)
- 06. Basic Adult Probation and Parole Academy.** A basic course of instruction for Adult Probation and Parole Officers as recognized by POST Council. (4-2-08)
- 07. Basic Correction Academy.** A basic course of instruction for Correction Officers as recognized by POST Council. (4-2-08)
- 08. Basic Detention Academy.** A basic course of instruction for Detention Officers as recognized by POST Council. (4-2-08)
- 09. Basic Juvenile Detention Academy.** A basic course of instruction for Juvenile Detention Officers as recognized by POST Council. (4-2-08)
- 10. Basic Juvenile Probation Academy.** A basic course of instruction for Juvenile Probation Officers as recognized by POST Council. (4-2-08)
- 11. Basic Patrol Academy.** A basic course of instruction for Patrol Officers as recognized by POST Council. (4-2-08)
- 12. College Credit.** A unit of work towards a baccalaureate or vocational degree accepted by a college or university of higher education accredited by the Northwest Association of Schools and Colleges or other equivalent accrediting agency. (7-1-93)
- 13. Correction Officer.** Any employee of an Idaho Department of Correction facility or private prison contractor of the State Board of Correction who is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the correction facility. (3-30-07)
- 14. Correction Standards and Training Council.** An advisory group to the POST Council that is comprised of members from academia and law enforcement agencies. The purpose of the Correction Standards and Training Council is to advise POST Council in the planning, development, and operation of the Basic Correction Academy and the Basic Adult Probation and Parole Academy. (4-2-08)

15. **Council.** The Idaho Peace Officer Standards and Training Council. (4-2-08)
16. **County Detention Officer.** An employee in a county jail who is responsible for the safety, care, protection, and monitoring of county jail inmates. (4-5-00)
17. **Crime of Deceit.** Any offense described in Section 18-1301 et seq., Idaho Code, (Bribery), Section 18-1401 et seq. (Burglary), Sections 18-1901 (Fictitious Stock Subscription), 18-1902 (Exhibition of False Papers to Public Officers), 18-1903 (Use of False Name in Prospectus), 18-1904 (Illegal Dividends and Reductions of Capital), 18-1905 (Falsification of Corporate Books), 18-1906 (Fraudulent Reports by Officers), 18-2202(1) (Computer Crime), 18-2302 (False Swearing as to Qualifications as Voter), 18-2304 (Procuring Illegal Votes), 18-2305 (Intimidation, Corruption and Frauds), 18-2306 (Illegal Voting or Interference with Election), 18-2307 (Attempting to Vote When Not Qualified or to Repeat Voting), 18-2309 (Officers Attempting to Change Result), 18-2310 (Forging or Counterfeiting Returns), 18-2311 (Adding to or Subtracting From Votes), 18-2316 (Tampering with Certificates of Nomination or Ballots), 18-2320 (Bribery of Electors), Section 18-2401 et seq. (Theft), Section 18-2601 et seq. (Falsifying Evidence -- Offering Forged or Fraudulent Documents in Evidence), Section 18-2701 et seq. (Bribery of Executive Officers), Sections 18-3105 (False Statement by Commission Merchant, Broker, Agent, Factor or Consignee to Principal or Consignor), 18-3106 (Drawing Check Without Funds -- Drawing Check With Insufficient Funds -- Prima Facie Evidence of Intent -- Standing of Person Having Acquired Rights -- Probation Conditions), 18-3123 (Forgery of a Financial Transaction Card), 18-3124 (Fraudulent Use of a Financial Transaction Card), 18-3125 (Criminal Possession of Financial Transaction Card and FTC Forgery Devices), 18-3125A (Unauthorized Factoring of Credit Card Sales Drafts), 18-3126 (Misappropriation of Personal Identifying Information), 18-3127 (Receiving or Possessing Fraudulently Obtained Goods or Services), 18-3201 (Officer Stealing, Mutilating or Falsifying Public Records), 18-3202 (Private Person Stealing, Mutilating or Falsifying Public Records), 18-3203 (Offering False or Forged Instrument for Record), 18-3204 (False Certificates or Other Instruments from Officers), 18-3206 (Mutilating Written Instruments), Section 18-3601 et seq. (Forgery), Sections 18-4616 (Defacing Marks on Logs or Lumber), 18-4617 (Stealing Rides on Trains), 18-4621 (Stealing Electric Current -- Tampering with Meters), 18-4622 (Stealing Electric Current -- Accessories Liable as Principals), 18-4624 (Taken or Converted Merchandise as Theft), 18-4626 (Willful Concealment of Goods, Wares or Merchandise -- Defense for Detention), 18-4630 (Illegal Use of Documents), 18-4701 (Alteration of Bills), 18-4702 (Alteration of Enrolled Copies), 18-4703 (Offering Bribes to Legislators), 18-4704 (Legislators Receiving Bribes), Section 18-5401 et seq. (Perjury), Section 18-6501 et seq. (Robbery), Sections 18-8201 (Money Laundering and Illegal Investment -- Penalty -- Restitution), 41-293 (Insurance Fraud), 41-294 (Damage to or Destruction of Insured Property), 41-1306 (False Financial Statements), 49-228 (Receiving or Transferring Stolen Vehicles), 49-231 (Farm Implements -- Purchasing or Selling When Identifying Number Altered or Defaced a Felony), 49-232 (Fraudulent Removal or Alteration of Numbers Prohibited), 49-518 (Altering or Forging Certificate -- Stolen Cars -- Destroying or Altering Engine or Decal Number -- Use of Fictitious Name -- Fraud), or any attempt, conspiracy or solicitation to commit any of the foregoing offenses, or any racketeering offense under Section 18-7801 et seq., Idaho Code, in which any of the foregoing offenses constitutes at least one (1) of the predicate acts, or any other crime defined in the Idaho Code involving any form of theft or including fraudulent intent as an element, or an offense equivalent to any of the foregoing in any other jurisdiction. (4-2-08)
18. **Direction.** Direction, at its broadest term, allows an employing agency to utilize a Level II reserve officer to work under the immediate presence and direction of a full-time peace officer of the same agency. This does not allow a Level II reserve officer to operate alone in his official capacity. He shall be under direct observation and control of the agency's full-time peace officer. (3-29-12)
19. **Field Training.** Training in which an individual receives formal instruction on the job for special and defined purposes. (7-1-93)
20. **Full Time.** Employment of one hundred sixty (160) hours or more per month for ninety (90) consecutive calendar days. (4-2-08)
21. **High School.** A school accredited as a high school by the Department of Education of the state in which the high school is located, or a school accredited as a high school by the recognized regional accreditation body, or a school accredited as a high school by the State University of the state in which the school is located. (7-1-93)



**22. In-Service Training.** Training designed to refresh or add to an individual's capabilities to do the task to which they are or may be assigned. (7-1-93)

**23. Juvenile Detention Center.** A juvenile detention facility that is part of or administered by the county or any political subdivision thereof and is responsible for the safety, care, protection, and monitoring of juvenile offenders. (4-2-08)

**24. Juvenile Detention Officer.** Any employee of a juvenile detention center who is responsible for the safety, care, protection, and monitoring of juvenile offenders held in the detention center. (4-2-08)

**25. Juvenile Probation Officer.** Any employee of a juvenile probation department who is responsible for preparing social history reports to the court, making recommendations regarding conditions of probation, and the supervision of juvenile offenders' compliance with court orders. (4-2-08)

**26. Juvenile Training Council.** An advisory group to the POST Council that is composed of the Director of the Department of Juvenile Corrections, a Magistrate, a county Juvenile Detention Director, a county Chief Probation Officer, a county Commissioner, a county Clerk, and a county Sheriff. The purpose of the Juvenile Training Council is to advise POST Council in the planning, development, and operation of the Juvenile Detention and Juvenile Probation Academies. (4-2-08)

**27. Law Enforcement Profession.** As used in agreements authorized pursuant to Section 19-5112, Idaho Code, means an employee of a police or law enforcement agency that is a part of or administered by the state or any political subdivision thereof and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision; an employee in a county jail who is responsible for the safety, care, protection, and monitoring of county jail inmates; an employee of a juvenile detention center that is part of or administered by the county or any political subdivision thereof and who is responsible for the safety, care, protection, and monitoring of juvenile offenders held in the detention center; an employee of a county juvenile probation department who is responsible for preparing social history reports to the court, making recommendations regarding conditions of probation, and the supervision of juvenile offenders' compliance with court orders; an employee of an Idaho Department of Correction facility or private prison contractor of the State Board of Correction who is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the correction facility; or an employee of the Idaho Department of Correction who is responsible for the supervision of offenders on probation or parole; or an employee working as an emergency services dispatcher. (4-2-08)(      )

**28. Manual.** This book of Rules as adopted by the Idaho Peace Officer Standards and Training Council. (4-5-00)

**29. Part Time.** Employment of less than one hundred sixty (160) hours per month for ninety (90) consecutive calendar days. (4-2-08)

**30. Part-Time Juvenile Detention Officer.** Any employee of a juvenile detention center that is part of or administered by the county or any political subdivision thereof and who is responsible for the safety, care, protection, and monitoring of juvenile offenders held in the detention center, and does not meet the definition of "employee" as defined in Section 59-1302, Idaho Code. (4-2-08)

**31. Peace Officer.** Any employee of a police or law enforcement agency which is a part of or administered by the state or any political subdivision thereof and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision. "Peace officer" also means an employee of a police or law enforcement agency of a federally recognized Indian tribe who has satisfactorily completed the peace officer standards and training academy and has been deputized by a sheriff of a county or a chief of police of a city of the state of Idaho. (4-5-00)

**32. POST.** The Idaho Peace Officer Standards and Training Program. (7-1-93)

**33. POST Basic Training Academy.** The Basic Adult Probation and Parole Academy, the Basic Correction Academy, the Basic Detention Academy, the Basic Juvenile Detention Academy, the Basic Juvenile

Probation Academy, or the Basic Patrol Academy. (4-2-08)

**34. Prosecutor.** A city prosecuting attorney, city assistant prosecuting attorney, county prosecuting attorney, county deputy prosecuting attorney, attorney general, deputy attorney general, United States attorney, or assistant United States attorney. (4-2-03)

**35. Qualified Instructor.** Any person certified by the Idaho POST Council as being competent to teach in a Council-approved school. (4-2-08)

**36. Reserve Peace Officer.** An individual assigned by an agency to perform the duties of a peace officer on a part-time basis. All reserve officers shall be under supervision as set forth in these rules unless they hold a current Part-Time Basic certificate. (4-2-08)

**37. School.** Any school, college, university, academy, or local training program which offers law enforcement training and includes within its meaning the combination of course curriculum, instructors and facilities, or any training session as certified by POST. (7-1-93)

**38. School Director or Coordinator.** An individual charged with the responsibility of conducting a training school under the provisions of the Act. (7-1-93)

**39. Specification.** A description of a requirement supplementing a section of the Rules. (7-1-93)

**40. Supervision.** Supervision allows the employing agency to utilize a Level I reserve officer to work by himself without the immediate presence or direction of a full-time peace officer, but acting under the overall on-duty supervision of an on-duty, full-time peace officer. This may allow a Level I reserve officer to work alone in his jurisdiction, without immediate oversight of an agency full-time peace officer, as long as there were another full-time peace officer of the agency working at the same time to provide supervision of the Level I reserve officer's activities. (3-29-12)

**41. Temporary.** Employment of less than ninety (90) consecutive calendar days. (7-1-93)

**42. Trainee.** An officer participating in any POST approved training program. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**059. PHYSICAL - MEDICAL.**

**01. Requirements.** (7-1-93)

**a. Hearing.** The applicant shall have unaided or aided hearing between zero (0) and twenty-five (25) decibels for each ear at the frequencies of five-hundred (500) Hz, one thousand (1000) Hz, two thousand (2000) Hz, and three thousand (3000) Hz. Waiver of the above may be considered by the POST Division Administrator if accompanied by the certificate of an audiologist or ear, nose, and throat physician that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of a peace, detention, juvenile detention, juvenile probation, or adult misdemeanor probation officer, or a direct care staff member of the Idaho Department of Juvenile Corrections. The POST Division Administrator shall have the discretion to refer the application to the POST Council. (4-7-11)

**b. Vision.** (7-1-93)

**i.** The applicant shall possess binocular coordination that does not manifest diplopia; depth of proficiency of a minimum of one (1) minute of arc at twenty (20) feet; peripheral vision shall be binocularly two hundred (200) degrees laterally with sixty (60) degrees upward and seventy (70) degrees downward. There shall be no pathology of the eye; applicant shall possess a minimum seventy percent (70%) proficiency on a color

discrimination test. Waiver of the above may be considered by the POST Division Administrator if accompanied by the certificate of a vision specialist that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of a peace, detention, juvenile detention, juvenile probation, or adult misdemeanor probation officer, or a direct care staff member of the Idaho Department of Juvenile Corrections. The POST Division Administrator shall have the discretion to refer the application to the POST Council. (4-7-11)

ii. The applicant shall have uncorrected vision in each eye of no weaker than twenty/two hundred (20/200) with the strong eye corrected to twenty/twenty (20/20) and the weaker eye corrected to twenty/sixty (20/60). An applicant who wears contact lenses is exempt from the uncorrected vision of twenty/two hundred (20/200), but shall have the strong eye corrected to twenty/twenty (20/20) and the weaker eye corrected to twenty/sixty (20/60). A full eye examination shall be administered by an optometrist or ophthalmologist to any applicant who wears glasses whose uncorrected vision in either eye is twenty/one hundred fifty (20/150) or weaker. Waiver of the above may be considered by the POST Division Administrator if accompanied by the certificate of a vision specialist that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of a peace, detention, juvenile detention, juvenile probation, or adult misdemeanor probation officer, or a direct care staff member of the Idaho Department of Juvenile Corrections. The POST Division Administrator shall have the discretion to refer the application to the POST Council. (4-7-11)

c. Disease/Condition. The applicant shall be free from any impediments of the senses of sight, hearing, taste, smell, and touch; physically sound; well developed physically and in possession of his extremities; free from any physical defects, chronic or organic diseases, organic or functional conditions, or emotional or mental instabilities which may tend to impair efficient performance of duty or which might endanger the lives of others or the life of the officer. Waiver of the above may be considered by the Council upon the applicant's demonstration that the deficiency does not jeopardize or impair his ability to perform the duties of a peace, detention, juvenile probation, or adult misdemeanor probation officer, or a direct care staff member of the Idaho Department of Juvenile Corrections. (4-7-11)

d. Agency Physical Readiness Test. To determine the applicant's physical capability, a physical readiness test based upon the job requirements of the appointing agency shall be administered by the appointing agency to each applicant. (4-7-11)

**02. Procedures.** (7-1-93)

a. A POST Council-approved medical history form shall be supplied by each applicant to the examining physician. The medical history shall include information on past and present diseases, injuries and operations. (4-7-11)

b. A medical examination shall be administered by a licensed physician or his designee to determine if the applicant is free from any physical, emotional, or mental condition which might adversely affect the applicant's ability to perform the duties of a peace, detention, juvenile detention, juvenile probation, or adult misdemeanor probation officer, or a direct care staff member of the Idaho Department of Juvenile Corrections. The physician shall record his findings on the appropriate form and shall note thereon any past or present physical defects, diseases, injuries, operations or conditions of an abnormal or unusual nature, or indications of mental or emotional instability. A medical examination shall remain valid for one (1) year unless extended by the POST Division Administrator under extraordinary conditions and for good cause shown. (~~4-7-11~~)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**197. GENERAL PROVISIONS.**

**01. Certificates and Awards.** Certificates and awards may be presented by the Council for the purpose of recognizing or raising the level of competence of law enforcement and to foster cooperation among the Council, agencies, groups, organizations, jurisdictions, and individuals. Communications Specialist Certification is not statutorily mandated, but is voluntary. Any applicant who is the subject of an investigation by an agency with

competent authority and jurisdiction is not eligible for POST certification of any kind while under investigation.

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

**02. Property.** Certificates and awards remain the property of the Council and are only valid as long as the communications specialist is appointed as an Idaho communications specialist by a duly constituted Idaho law enforcement agency and has not been decertified. (3-29-10)

**03. Eligibility.** To be eligible for the award of a Level I, Level II, Level III, or Advanced certificate, each applicant shall be a full-time communications specialist appointed by a duly constituted Idaho law enforcement agency. (4-2-03)

**04. Applications.** All applications for award of the Level I, Level II, Level III, or Advanced Certificates shall be completed by the applicant on the prescribed form "Application for Certification" as provided by the POST Council. (4-2-03)

**05. Submission.** The Application for Certification form shall be submitted by the applicant to his agency head who shall review it for accuracy prior to signing it and forwarding it to the Council. Certificates shall be issued to the agency head for award to the applicant. (4-2-03)

**06. Training.** Training not listed on the applicant's Idaho POST training record shall be supported by copies of certificates, course outlines, or other verifying documents attached to the application. (4-2-03)

**07. Minimum Standards.** Each applicant shall meet the minimum standards for employment as provided in Sections 050, 051, 052, 054, 055, 056, and 058. (3-29-12)

## IDAPA 11 - IDAHO STATE POLICE

### 11.11.02 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL FOR JUVENILE DETENTION OFFICERS

DOCKET NO. 11-1102-1201

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 19-5107, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

Removes exception of physical disability in minimum employment standards, as that language is outdated and also conflicts with another provision in the rules. Changes term "must" to the more appropriate term "shall." Removes outdated language in reference to height and weight requirements. Establishes the Intermediate certificate and the requirements for achieving it.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 representatives of the affected parties were involved in the drafting and approval of the rule.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Trish Christy at (208) 884-7253.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 14th day of August, 2012.

William L. Flink, Division Administrator  
Idaho State Police/Peace Officer Standards & Training  
700 S. Stratford Dr., Meridian, ID 83642  
Phone: (208) 884-7251/Fax: (208) 884-7295

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#### THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-1102-1201

##### 030. JUVENILE DETENTION OFFICER CERTIFICATION.

**01. Decertification.** The council may decertify any juvenile detention officer in the same manner as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Subsection 091.03.

(3-30-01)

**02. Certification.** The following dates govern voluntary and mandatory certification. (3-30-01)

**a.** From October 1, 2000 through September 30, 2002, any county Juvenile Detention Officer may receive voluntary certification from POST upon successful completion of the requirements outlined in Sections 031 or 032. (3-30-01)

**b.** If employed after October 1, 2002, any juvenile detention officer shall be certified by obtaining mandatory certification from the Peace Officer Standards and Training Council within one (1) year of the date the officer was first employed as a juvenile detention officer. (3-30-01)

**c.** Juvenile detention officers employed prior to October 1, 2002, shall comply with the training and certification provisions of Section 030 by September 30, 2004, however, the requirement for successful completion of the POST Basic Juvenile Detention Academy shall be waived if the officer scores a minimum of seventy-five percent (75%) on a challenge examination administered by POST and any other requirements for certification. The officer shall be allowed two (2) attempts to pass the examination. The attempts shall be no less than thirty (30) days apart and no more than six (6) months apart. If the officer fails both attempts or fails to retake the examination within six (6) months, the officer shall successfully complete the POST Basic Juvenile Detention Academy to be certified. (3-29-12)

**03. Applications.** All applications for award of the Juvenile Detention Officer Certificate shall be completed on the prescribed form "Application for Certification" as provided by the POST Council. (3-30-01)

**04. Submission.** The Application for Certification form shall be submitted by the officer/applicant to the applicant's department head, who shall forward the application to the Council. Certificates shall be issued to the department head for award to the applicant. (3-29-12)

**05. Minimum Standards.** (3-29-12)

**a.** Each applicant shall meet the minimum standards for employment and training as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," with the exception of fitness ~~and physical disability~~ which shall be left to the discretion of the employing agency. ~~(3-29-12)~~( )

**b.** A POST-certified detention officer who does not change employers but simply takes on juvenile detention responsibilities, shall not be required to meet the hearing and vision standards again in order to qualify for juvenile detention certification. (3-29-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**033. PART-TIME JUVENILE DETENTION OFFICER CERTIFICATION.**

**01. Certification.** ~~The following dates govern mandatory certification:~~ (4-11-06)

~~**a.** If employed after October 1, 2006, any A~~ part-time juvenile detention officer ~~must shall~~ be certified by ~~obtaining mandatory certification from~~ the Idaho Peace Officer Standards and Training Council within one (1) year of the date the officer was first employed as a part-time juvenile detention officer. ~~(4-11-06)~~( )

~~**b.** Part-time juvenile detention officers employed prior to October 1, 2006, must comply with the training and certification provisions of Section 033 by September 30, 2007.~~ (4-11-06)

**02. Minimum Standards.** Each applicant ~~must shall~~ meet the minimum standards for employment and training as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," with the exception of ~~height, weight, fitness, and physical disability~~ which ~~will shall~~ be left to the discretion of the employing agency. ~~(4-11-06)~~( )

**03. Eligibility.** To be eligible for the award of the part-time juvenile detention officer certificate, each applicant ~~must~~ shall meet the definition of part-time juvenile detention officer as defined in Subsection 010.07.

~~(4-11-06)~~( )

**04. Supervision.** All certified part-time juvenile detention officers ~~must~~ shall be under the direct supervision of a certified full-time juvenile detention officer. This section is intended to limit the activity of a part-time juvenile detention officer. Each agency ~~must~~ shall draft its own individual agency policy in reference to the supervision of its certified part-time juvenile detention officers and that policy ~~must~~ shall be kept on file within each agency.

~~(4-11-06)~~( )

**05. Limitation.** A part-time juvenile detention officer's certification ~~will~~ shall be effective only during those periods when he is formally assigned by the appointing agency to perform the duties of a certified part-time juvenile detention officer.

~~(4-11-06)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**035. HIGHER CERTIFICATION.**

**01. General Provisions.** In addition to the requirements set forth above for the Basic Certificate, each applicant for the award of an Intermediate Certificate shall have completed the designated education and training, combined with the prescribed juvenile justice experience. ( )

**02. Education.** Education shall be supported by copies of transcripts, certificates, diplomas, or degrees attached to the application. ( )

**03. Training Not Listed.** Training not listed on the applicant's Idaho POST training record shall be supported by copies of certificates, course outlines, or other verifying documents attached to the application. ( )

**04. Probationary Period.** The officer shall have completed the probationary period required by their agency when making application for Intermediate Certification. ( )

**036. INTERMEDIATE CERTIFICATE.**

**01. Requirements.** ( )

**02. Basic Certificate.** The applicant shall possess, or be eligible to possess, a Basic Certificate. ( )

**03. College Credits, Training Hours, and Experience.** The applicant shall have acquired the following combination of college credits and/or POST training hours, combined with the prescribed years of juvenile justice experience, or the college degree designated from an accredited college or university, combined with the prescribed years of juvenile justice experience, and have graduated from the POST Basic Juvenile Detention Academy:

<u>POST Training Hours Including POST Basic Juvenile Detention Academy</u>	<u>200 hours</u>	<u>400 hours</u>	<u>600 hours</u>	<u>800 hours</u>	<u>1,000 hours</u>	<u>POST Basic Juvenile Detention Academy</u>	
<u>One College Credit Equals Twenty (20) POST Training Hours</u>	<u>The above may be a combination of College Credits and POST Training Hours</u>					<u>Academic Associate Degree</u>	<u>Academic Baccalaureate Degree</u>
<u>Years of Juvenile Justice Experience</u>	<u>8</u>	<u>7</u>	<u>6</u>	<u>5</u>	<u>4</u>	<u>4</u>	<u>2</u>

( )

**037. (RESERVED)**

**0358. LAPSE OF JUVENILE DETENTION OFFICER CERTIFICATION.**

The certification of any juvenile detention officer shall be considered lapsed if the officer does not serve as a juvenile detention officer in Idaho for three (3) consecutive years. Provided, however, that an Idaho POST-certified juvenile detention officer who remains in a juvenile probation officer, Juvenile Corrections direct care staff, or misdemeanor probation officer duty assignment with a law enforcement agency that is a part of or administered by the state of Idaho or any political subdivision thereof shall retain their POST certification provided they work at least sixty (60) hours per year in that capacity. The three-year period provided herein shall be tolled during any time period that a juvenile detention officer is the subject of a POST decertification investigation and is no longer employed in law enforcement. (4-7-11)

**01. Three to Five Years.** A juvenile detention officer who has been out of full-time juvenile detention officer employment status from three (3) to five (5) years and who wants to reactivate certification shall meet the following POST requirements: (4-7-11)

- a.** Submit a POST Certification Juvenile Detention Challenge Packet; (4-7-11)
- b.** Pass the POST juvenile detention certification examination approved by the POST Council, administered by a POST Training Specialist, and conducted in the manner set forth in Subsection 030.02.c.; and (4-7-11)
- c.** Satisfactorily complete a probationary period as set forth in Subsection 031.01. (4-7-11)

**02. Over Five Years.** A juvenile detention officer who has been out of full-time juvenile detention officer employment status for over five (5) years shall attend the POST Basic Juvenile Detention Academy and comply with the requirements of Sections 030 and 031 of these rules to reactivate certification. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the time out of full-time juvenile detention officer employment, the officer was engaged in an occupation requiring juvenile justice training, skill, and experience. This evidence shall be submitted with a POST Certification Juvenile Detention Challenge Packet. Upon receiving a waiver, the officer shall meet the following POST requirements: (4-7-11)

- a.** Pass the POST juvenile detention certification examination approved by the POST Council, administered by a POST Training Specialist, and conducted in the manner set forth in Subsection 030.02.c.; and (4-7-11)
- b.** Satisfactorily complete a probationary period as set forth in Subsection 031.01. (4-7-11)

**03. Over Eight Years.** A juvenile detention officer who has been out of full-time juvenile detention officer employment status for over eight (8) years shall attend the POST Basic Juvenile Detention Academy and comply with the requirements of Sections 030 and 031 of these rules to reactivate certification. No waiver of this requirement shall be granted by the Council. (4-7-11)

**04. Exceptions.** (4-7-11)

- a.** The provisions of Subsections 038.01 through 038.03 shall not apply to officers holding a part-time Juvenile Detention certificate who work at least sixty (60) hours per year as a Juvenile Detention officer. (4-7-11)
- b.** The certification of a full-time Juvenile Detention officer transferring to part-time Juvenile Detention officer employment shall remain valid as long as the officer works at least sixty (60) hours per year as a Juvenile Detention officer. (4-7-11)

**0369. -- 999. (RESERVED)**



## IDAPA 11 - IDAHO STATE POLICE

### 11.11.03 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL FOR JUVENILE PROBATION OFFICERS

DOCKET NO. 11-1103-1201

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 19-5107, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

Removes exception of physical disability in minimum employment standards, as that language is outdated and also conflicts with another provision in the rules. Establishes the Intermediate certificate and the requirements for achieving it.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 representatives of the affected parties were involved in the drafting and approval of the rule.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Trish Christy at (208) 884-7253.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 14th day of August, 2012.

William L. Flink, Division Administrator  
Idaho State Police/Peace Officer Standards & Training  
700 S. Stratford Dr.  
Meridian, ID 83642  
Phone: (208) 884-7251  
Fax: (208) 884-7295

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-1103-1201

**030. JUVENILE PROBATION OFFICER CERTIFICATION.**

**01. Decertification.** The council may decertify any juvenile probation officer in the same manner as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Subsection 091.03. (5-3-03)

**02. Certification.** (4-7-11)

**a.** Any full-time juvenile probation officer employed on or after October 1, 2003, shall be certified by the Peace Officer Standards and Training Council within one (1) year of their initial hire date as a full-time juvenile probation officer. (4-7-11)

**b.** Any full-time juvenile probation officer employed prior to October 1, 2003 shall be certified by the Peace Officer Standards and Training Council by September 30, 2005; however, the requirement for successful completion of the POST Basic Juvenile Probation Academy shall be waived if the officer scores a minimum of seventy-five percent (75%) on the POST juvenile probation certification examination. The officer shall be allowed two (2) attempts to pass the examination. The attempts shall be no less than thirty (30) days apart and no more than six (6) months apart. If the officer fails both attempts or fails to retake the examination within six (6) months, he shall successfully complete the POST Basic Juvenile Probation Academy to be certified. (4-7-11)

**c.** Any part-time juvenile probation officer employed on or after October 1, 2010 shall be certified by the Peace Officer Standards and Training Council within one (1) year of their initial hire date as a part-time juvenile probation officer. (4-7-11)

**d.** Any part-time juvenile probation officer employed prior to October 1, 2010 shall be certified by the Peace Officer Standards and Training Council by September 30, 2012; however, the requirement for successful completion of the POST Basic Juvenile Probation Academy shall be waived if the officer successfully completes the challenge procedure requirements prescribed in Section 032 of these rules. (4-7-11)

**03. Applications.** All applications for award of the Juvenile Probation Officer Certificate shall be completed on the prescribed form "Application for Certification" as provided by the POST Council. (5-3-03)

**04. Submission.** The Application for Certification form shall be submitted by the applicant to his agency head, who shall review it for accuracy prior to signing it and forwarding it to the Council. Certificates shall be issued to the agency head for award to the applicant. (4-7-11)

**05. Minimum Standards.** Each applicant shall meet the minimum standards for employment and basic training as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," with the exception of fitness ~~and physical disability~~ which shall be left to the discretion of the employing agency. (4-7-11)( )

**06. Retaining Certification.** A certified juvenile probation officer shall work sixty (60) hours annually in a juvenile probation officer capacity to retain certification. Documentation of hours worked shall be kept on file at the employing agency. Any juvenile probation officer working less than sixty (60) hours annually shall complete all requirements set forth in Section 03~~3~~<sup>5</sup> to be recertified. (4-7-11)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**033. HIGHER CERTIFICATION.**

**01. General Provisions.** In addition to the requirements set forth above for the Basic Certificate, each applicant for the award of an Intermediate Certificate shall have completed the designated education and training, combined with the prescribed juvenile justice experience. ( )

**02. Education.** Education shall be supported by copies of transcripts, certificates, diplomas, or degrees attached to the application. ( )

**03. Training Not Listed.** Training not listed on the applicant's Idaho POST training record shall be supported by copies of certificates, course outlines, or other verifying documents attached to the application. ( )

**04. Probationary Period.** The officer shall have completed the probationary period required by their agency when making application for Intermediate Certification. ( )

**034. INTERMEDIATE CERTIFICATE.**

**01. Requirements.** ( )

**02. Basic Certificate.** The applicant shall possess, or be eligible to possess, a Basic Certificate. ( )

**03. College Credits, Training Hours, and Experience.** The applicant shall have acquired the following combination of college credits and/or POST training hours, combined with the prescribed years of juvenile justice experience, or the college degree designated from an accredited college or university, combined with the prescribed years of juvenile justice experience, and have graduated from the POST Basic Juvenile Probation Academy:

<u>POST Training Hours Including POST Basic Juvenile Probation Academy</u>	<u>200 hours</u>	<u>400 hours</u>	<u>600 hours</u>	<u>800 hours</u>	<u>1,000 hours</u>	<u>POST Basic Juvenile Probation Academy</u>	
<u>One College Credit Equals Twenty (20) POST Training Hours</u>	<u>The above may be a combination of College Credits and POST Training Hours</u>					<u>Academic Associate Degree</u>	<u>Academic Baccalaureate Degree</u>
<u>Years of Juvenile Justice Experience</u>	<u>8</u>	<u>7</u>	<u>6</u>	<u>5</u>	<u>4</u>	<u>4</u>	<u>2</u>

( )

**035. (RESERVED)**

**036. LAPSE OF JUVENILE PROBATION OFFICER CERTIFICATION.**

The certification of any juvenile probation officer shall be considered lapsed if the officer does not serve as a juvenile probation officer in Idaho for three (3) consecutive years. Provided, however, that an Idaho POST-certified juvenile probation officer who remains in a juvenile detention officer, Juvenile Corrections direct care staff, or misdemeanor probation officer duty assignment with a law enforcement agency that is a part of or administered by the state of Idaho or any political subdivision thereof shall retain their POST certification provided they work at least sixty (60) hours per year in that capacity. The three-year period provided herein shall be tolled during any time period that a juvenile probation officer is the subject of a POST decertification investigation and is no longer employed in law enforcement. (4-7-11)

**01. Three to Five Years.** A juvenile probation officer who has been out of juvenile probation officer employment status from three (3) to five (5) years and who wants to reactivate certification shall meet the following POST requirements: (4-7-11)

**a.** Submit a POST Certification Juvenile Probation Challenge Packet; (4-7-11)

**b.** Pass the POST juvenile probation certification examination approved by the POST Council, administered by a POST Training Specialist, and conducted in the manner set forth in Subsection 030.02.b.; and (4-7-11)

- c. Satisfactorily complete a probationary period as set forth in Subsection 031.01. (4-7-11)

**02. Over Five Years.** A juvenile probation officer who has been out of juvenile probation officer employment status for over five (5) years shall attend the POST Basic Juvenile Probation Academy and comply with the requirements of Sections 030 and 031 of these rules to reactivate certification. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the time out of juvenile probation officer employment, the officer was engaged in an occupation requiring juvenile justice training, skill, and experience. This evidence shall be submitted with a POST Certification Juvenile Probation Challenge Packet. Upon receiving a waiver, the officer shall meet the following POST requirements: (4-7-11)

a. Pass the POST juvenile probation certification examination approved by the POST Council, administered by a POST Training Specialist, and conducted in the manner set forth in Subsection 030.02.b.; and (4-7-11)

- b. Satisfactorily complete a probationary period as set forth in Subsection 031.01. (4-7-11)

**03. Over Eight Years.** A juvenile probation officer who has been out of juvenile probation officer employment status for over eight (8) years shall attend the POST Basic Juvenile Probation Academy and comply with the requirements of Sections 030 and 031 of these rules to reactivate certification. No waiver of this requirement shall be granted by the Council. (4-7-11)

**0347. -- 999. (RESERVED)**

## IDAPA 11 - IDAHO STATE POLICE

### 11.11.04 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL FOR CORRECTION OFFICERS AND ADULT PROBATION AND PAROLE OFFICERS

DOCKET NO. 11-1104-1201

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 19-5107, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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:

Allows the POST Division Administrator to extend over one year the validity of an applicant's medical examination under extraordinary conditions and for good cause shown. Changes the term "will" and "must" to the more appropriate term "shall." Allows an Idaho POST-certified correction officer or probation & parole officer who transfers to an administrative position with the Idaho Department of Correction to retain their POST certification provided they don't leave employment with IDOC and they attend twenty hours of training per year.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 representatives of the affected parties were involved in the drafting and approval of the rule.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Trish Christy at (208) 884-7253.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 14th day of August, 2012.

William L. Flink, Division Administrator  
Idaho State Police/Peace Officer Standards & Training  
700 S. Stratford Dr.  
Meridian, ID 83642  
Phone: (208) 884-7251  
Fax: (208) 884-7295

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-1104-1201

**039. PHYSICAL -- MEDICAL.**

**01. Requirements.** (4-11-06)

**a.** Hearing. The applicant shall have unaided or aided hearing between zero (0) and thirty (30) decibels for each ear at the frequencies of one thousand (1000) Hz and two thousand (2000) Hz; and unaided or aided hearing between zero (0) and fifty (50) decibels for each ear at the frequency of three thousand (3000) Hz. Waiver of the above may be considered by the POST Division Administrator if accompanied by the certificate of an audiologist or ear, nose, and throat physician that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of a correction officer. The POST Division Administrator shall have the discretion to refer the application to the POST Council. (4-7-11)

**b.** Vision. The applicant shall have uncorrected vision in each eye of no weaker than twenty/two hundred (20/200) with the strong eye corrected to twenty/thirty (20/30) and the weaker eye corrected to twenty/sixty (20/60). An applicant who wears contact lenses is exempt from the uncorrected vision of twenty/two hundred (20/200), but shall have the strong eye corrected to twenty/thirty (20/30) and the weaker eye corrected to twenty/sixty (20/60). A full eye examination shall be administered by an optometrist or ophthalmologist to any applicant who wears glasses whose uncorrected vision in either eye is twenty/one hundred fifty (20/150) or weaker. Waiver of the above may be considered by the POST Division Administrator if accompanied by the certificate of a vision specialist that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of a correction officer. The POST Division Administrator shall have the discretion to refer the application to the POST Council. (4-7-11)

**c.** Disease/Condition. The applicant shall be free from any impediments of the senses of sight, hearing, taste, smell, and touch; physically sound; well developed physically and in possession of his extremities; free from any physical defects, chronic or organic diseases, organic or functional conditions, or emotional or mental instabilities which may tend to impair efficient performance of duty or which might endanger the lives of others or the life of the officer. Waiver of Subsection 039.01.c. may be considered by the Council upon the applicant's demonstration that the deficiency does not jeopardize or impair his ability to perform the duties of a correction officer. (4-7-11)

**d.** Physical Readiness Test. The applicant shall pass the POST Physical Readiness Test for Correction Officers. (4-7-11)

**02. Procedures.** (4-11-06)

**a.** A POST Council-approved medical history form shall be supplied by each applicant to the examining physician. The medical history shall include information on past and present diseases, injuries and operations. (4-7-11)

**b.** A medical examination shall be administered by a licensed physician or his designee to determine if the applicant is free from any physical, emotional, or mental condition which might adversely affect the applicant's ability to perform the duties of a correction officer. The physician shall record his findings on the appropriate form or letter and shall note thereon, for evaluation by the appointing authority, any past or present physical defects, diseases, injuries, operations or conditions of an abnormal or unusual nature, or indications of mental or emotional instability. A medical examination shall remain valid for one (1) year unless extended by the POST Division Administrator under extraordinary conditions and for good cause shown. (~~4-7-11~~)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**051. LAPSE OF CORRECTION OFFICER CERTIFICATION.**

The certification of any correction officer ~~will~~ shall be considered lapsed if the officer does not serve as a correction officer in Idaho for three (3) consecutive years. Provided, however, that an Idaho POST-certified correction officer

who remains in an administrative duty assignment with the Idaho Department of Correction shall retain their POST certification provided they do not leave employment with the Idaho Department of Correction and satisfy the continuing training requirement of at least twenty (20) hours per year. The three-year period provided herein shall be tolled during any time period that a correction officer is the subject of a POST decertification investigation and is no longer employed in law enforcement. ~~(3-29-10)~~( )

**01. Three to Five Years.** A correction officer who has been out of full-time correction officer status from three (3) to five (5) years and who wants to reactivate certification ~~must~~ shall meet the following POST requirements: ~~(3-29-10)~~( )

- a. Submit a POST Certification Correction Challenge Packet; (4-11-06)
- b. Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)
- c. Pass the following tests administered by a POST Training Specialist: (4-11-06)
  - i. The POST correction certification examination approved by the Council, conducted in the manner set forth in Subsection 053.02.b. of these rules; and (4-11-06)
  - ii. The POST Correction Officer Physical Agility Test; and (4-11-06)
- d. Satisfactorily complete a probationary period of not less than six (6) months. (4-11-06)

**02. Over Five Years.** A correction officer who has been out of full-time correction officer status for over five (5) years ~~must~~ shall attend the POST Basic Correction Academy or a POST-certified private prison contractor's correction officer training program to reactivate certification. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the time out of full-time correction officer status, the officer was engaged in an occupation requiring correction officer training, skill, and experience. This evidence ~~must~~ shall be submitted with a POST Certification Correction Challenge Packet. Upon receiving a waiver, the officer ~~must~~ shall meet the following POST requirements: ~~(3-29-10)~~( )

- a. Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)
- b. Pass the following tests administered by a POST Training Specialist: (4-11-06)
  - i. The POST correction certification examination approved by the Council, conducted in the manner set forth in Subsection 053.02.b. of these rules; and (4-11-06)
  - ii. The POST Correction Officer Physical Agility Test; and (4-11-06)
- c. Satisfactorily complete a probationary period of not less than six (6) months. (4-11-06)

**03. Over Eight Years.** A correction officer who has been out of full-time correction officer status for over eight (8) years ~~must~~ shall attend the POST Basic Correction Academy or a POST-certified private prison contractor's correction officer training program to be recertified. No waiver of this requirement ~~will~~ shall be granted by the Council. ~~(4-11-06)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**062. LAPSE OF ADULT PROBATION AND PAROLE OFFICER CERTIFICATION.**  
The certification of any adult probation and parole officer ~~will~~ shall be considered lapsed if the officer does not serve

as an adult probation and parole officer in Idaho for three (3) consecutive years. Provided, however, that an Idaho POST-certified adult probation and parole officer who remains in an administrative duty assignment with the Idaho Department of Correction shall retain their POST certification provided they do not leave employment with the Idaho Department of Correction and satisfy the continuing training requirement of at least twenty (20) hours per year. The three-year period provided herein shall be tolled during any time period that an adult probation and parole officer is the subject of a POST decertification investigation and is no longer employed in law enforcement. ~~(3-29-10)~~( )

**01. Three to Five Years.** An adult probation and parole officer who has been out of full-time adult probation and parole officer status from three (3) to five (5) years and who wants to reactivate certification ~~must~~ shall meet the following POST requirements: ~~(3-29-10)~~( )

- a.** Submit a POST Certification Adult Probation and Parole Challenge Packet; (4-11-06)
- b.** Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)
- c.** Pass the following tests administered by a POST Training Specialist: (4-11-06)
  - i.** The POST adult probation and parole certification examination approved by the Council, conducted in the manner set forth in Subsection 053.02.b. of these rules; (4-2-08)
  - ii.** The POST Firearms Qualification Course; (4-2-08)
  - iii.** The POST Adult Probation and Parole Officer Physical Agility Test; and (4-11-06)
- d.** Satisfactorily complete a probationary period of not less than six (6) months. (4-11-06)

**02. Over Five Years.** An adult probation and parole officer who has been out of full-time adult probation and parole officer status for over five (5) years ~~must~~ shall attend the POST Basic Adult Probation and Parole Academy to reactivate certification. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the time out of full-time adult probation and parole officer status, the officer was engaged in an occupation requiring adult probation and parole officer training, skill, and experience. This evidence ~~must~~ shall be submitted with a POST Certification Adult Probation and Parole Challenge Packet. Upon receiving a waiver, the officer ~~must~~ shall meet the following POST requirements: ~~(3-29-10)~~( )

- a.** Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)
- b.** Attend and pass Idaho POST-certified courses in Arrest Techniques and Practical Problems; (4-11-06)
- c.** Pass the following tests administered by a POST Training Specialist: (4-11-06)
  - i.** The POST adult probation and parole certification examination approved by the Council, conducted in the manner set forth in Subsection 053.02.b. of these rules; (4-2-08)
  - ii.** The POST Firearms Qualification Course; (4-2-08)
  - iii.** The POST Adult Probation and Parole Officer Physical Agility Test; and (4-11-06)
- d.** Satisfactorily complete a probationary period of not less than six (6) months. (4-11-06)

**03. Over Eight Years.** An adult probation and parole officer who has been out of full-time adult probation and parole officer status for over eight (8) years ~~must~~ shall attend the POST Basic Adult Probation and Parole Academy to be recertified. No waiver of this requirement ~~will~~ shall be granted by the Council. ~~(4-11-06)~~( )



## IDAPA 11 - IDAHO STATE POLICE

### 11.11.06 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL FOR MISDEMEANOR PROBATION OFFICERS

DOCKET NO. 11-1106-1201

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 19-5107, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

Removes exception of physical disability in minimum employment standards, as that language is outdated and also conflicts with another provision in the rules.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 representatives of the affected parties were involved in the drafting and approval of the rule.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Trish Christy at (208) 884-7253.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 14th day of August, 2012.

William L. Flink, Division Administrator  
Idaho State Police/Peace Officer Standards & Training  
700 S. Stratford Dr.  
Meridian, ID 83642  
Phone: (208) 884-7251/Fax: (208) 884-7295

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#### THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-1106-1201

##### 030. MISDEMEANOR PROBATION OFFICER CERTIFICATION.

**01. Decertification.** The POST Council may decertify any misdemeanor probation officer in the same manner as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council."(4-7-11)

**02. Eligibility.** To be eligible for the award of the Basic Misdemeanor Probation Certificate, an applicant shall be a full-time misdemeanor probation officer employed by an Idaho misdemeanor probation department. To be eligible for the award of the Part-Time Basic Misdemeanor Probation Certificate, an applicant shall be a part-time misdemeanor probation officer employed by an Idaho misdemeanor probation department. (4-7-11)

**03. Certification.** (4-7-11)

**a.** Any full-time or part-time misdemeanor probation officer employed on or after January 10, 2011 shall be certified by the Peace Officer Standards and Training Council within one (1) year of their initial hire date as a full-time or part-time misdemeanor probation officer. (4-7-11)

**b.** Any full-time or part-time misdemeanor probation officer employed prior to January 10, 2011 shall be certified by the Peace Officer Standards and Training Council by January 9, 2014; however, the requirement for successful completion of the POST Basic Misdemeanor Probation Academy shall be waived if the officer has been continuously employed as a misdemeanor probation officer in Idaho since January 10, 2006 and successfully completes the following: (4-7-11)

i. Submits a POST Certification Misdemeanor Probation Challenge Packet to POST Council, which shall include copies of training records, transcripts, certificates, diplomas, or other documents that substantiate the officer's training, education, and experience; (4-7-11)

ii. Passes the POST misdemeanor probation certification examination approved by the POST Council, administered by a POST Training Specialist, and conducted in the manner set forth in Subsection 031.03 of these rules; (4-7-11)

iii. Attends and passes the Idaho POST Misdemeanor Probation Academy's "Legal and Liability Issues" and "Appropriate Use of Physical Force" training or POST-approved equivalent; and (4-7-11)

iv. Satisfactorily completes a probationary period as set forth in Subsection 031.01 of these rules. (4-7-11)

**04. Applications.** All applications for award of a Misdemeanor Probation Certificate shall be completed by the applicant on the prescribed form "Application for Certification" as provided by the POST Council. (4-7-11)

**05. Submission.** The Application for Certification form shall be submitted by the applicant to his department head who shall review it for accuracy prior to signing it and forwarding it to the Council. Certificates shall be issued to the department head for award to the applicant. (4-7-11)

**06. Minimum Standards.** Each applicant shall meet the minimum standards for employment and basic training as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," with the exception of fitness ~~and physical disability~~ which shall be left to the discretion of the employing department. (4-7-11)( )

**07. Limitation of Part-Time Officers.** A part-time misdemeanor probation officer's certification shall be effective only during those periods when he is formally assigned by the employing department to perform the duties of a part-time misdemeanor probation officer. (4-7-11)

**08. From Full-Time to Part-Time Status.** The certification of a full-time Misdemeanor Probation officer transferring to part-time Misdemeanor Probation officer employment shall remain valid as long as the officer works at least sixty (60) hours per year as a Misdemeanor Probation officer. (4-7-11)

**09. From Part-Time to Full-Time Status.** To be certified as a full-time misdemeanor probation officer, a currently certified part-time misdemeanor probation officer, upon appointment to full-time misdemeanor probation officer status, shall submit an Application for Certification as prescribed in Subsections 030.04 and 030.05 of this rule. (4-7-11)

## IDAPA 12 - DEPARTMENT OF FINANCE

### 12.01.10 - RULES PURSUANT TO THE IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT

DOCKET NO. 12-0110-1201

#### 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, 26-31-103(2)(b), 26-31-204(5), and 26-31-302(2), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

The purpose of the proposed rulemaking is to update references to federal laws and regulations from "January 1, 2011" to "January 1, 2012," to correct references to federal regulations, and to include a definition of the Nationwide Mortgage Licensing System and Registry Policy Guidebook.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 of the simple nature of the proposed amendments.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

For effective supervision of mortgage practices in Idaho, the following are incorporated by reference: federal Real Estate Settlement Procedures Act; federal Truth in Lending Act; federal Regulation X; federal Regulation Z; and the NMLS Policy Guidebook.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Michael Larsen, Idaho Department of Finance, (208)-332-8000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 23rd day of August, 2012.

Michael Larsen  
Consumer Finance Bureau Chief  
Idaho Department of Finance  
800 Park Blvd., Suite 200  
Boise, ID 83712  
(208) 332-8000 (Phone)  
(208) 332-8096 (Fax)

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 12-0110-1201

**005. INCORPORATION BY REFERENCE (RULE 5).**

The "Rules Pursuant to the Idaho Residential Mortgage Practices Act," incorporate by reference the full text of the following ~~federal laws and regulations as defined in these rules: the Real Estate Settlement Procedures Act, Regulation X, the Truth in Lending Act, and Regulation Z.~~ ( )

**01. The Real Estate Settlement Procedures Act.** As set forth in 12 U.S.C. 2601, et seq., as amended to and including January 1, 2013. The Real Estate Settlement Procedures Act is available for viewing online at: <http://www.gpo.gov/fdsys/pkg/USCODE-2011-title12/html/USCODE-2011-title12-chap27.htm> ( )

**02. Regulation X.** As issued by the federal Bureau of Consumer Financial Protection and codified at 12 CFR 1024, et seq., as amended to and including January 1, 2013. Regulation X is available for viewing online at: <http://www.gpo.gov/fdsys/pkg/CFR-2012-title12-vol8/xml/CFR-2012-title12-vol8-part1024.xml> ( )

**03. The Truth in Lending Act.** As set forth in 15 U.S.C. 1601, et seq., as amended to and including January 1, 2013. The Truth in Lending Act is available for viewing online at: <http://www.gpo.gov/fdsys/pkg/USCODE-2011-title15/html/USCODE-2011-title15-chap41.htm> ( )

**04. Regulation Z.** As issued by the federal Bureau of Consumer Financial Protection and codified at 12 CFR 1026, et seq., as amended to and including January 1, 2013. Regulation Z is available for viewing online at: <http://www.gpo.gov/fdsys/pkg/CFR-2012-title12-vol8/xml/CFR-2012-title12-vol8-part1026.xml> ( )

**05. NMLS Policy Guidebook.** The Conference of State Bank Supervisors/American Association of Residential Mortgage Regulators NMLS Policy Guidebook for Licensees, published by the Nationwide Mortgage Licensing System and Registry as of July 23, 2012, and available at <http://mortgage.nationwidelicingsystem.org/slr/common/policy/Pages/default.aspx> ( )

**06. Availability of Documents.** Unless otherwise available, the documents incorporated by reference may be viewed at the central office of the Idaho Department of Finance, as noted in Section 002 of these rules. (3-29-10)( )

**006. DEFINITIONS (RULE 6).**

As used in the Idaho Residential Mortgage Practices Act and these rules, the following definitions apply: (3-29-10)

**01. Act.** Means the Idaho Residential Mortgage Practices Act, Title 26, Chapter 31, Idaho Code. (3-30-06)

**02. Application.** In relation to a "residential mortgage loan" or "loan modification" as defined in the Act, an "application" means a request for a residential mortgage loan or loan modification and any form or document representing such request. The term "application" does not include the processing of such request. (3-29-10)

**03. Closing.** Means the process of executing legally binding documents regarding a lien on property that is subject to a residential mortgage loan and includes the day agreed upon by a borrower and a licensee or person required to be licensed under the Act to complete such process. (3-29-10)

**04. Director.** Means the director of the Idaho Department of Finance. (3-30-06)

~~**05. Real Estate Settlement Procedures Act.** Means the act set forth in 12 U.S.C.A 2601, et seq., as amended to and including January 1, 2011. (3-29-12)~~

~~**06. Regulation X.** Means Regulation X as promulgated by the Department of Housing and Urban Development and codified in 24 CFR 3500 et seq., as amended to and including January 1, 2011. (3-29-12)~~

~~**07. Regulation Z.** Means Regulation Z as promulgated by the Board of Governors of the Federal~~

~~07. **Regulation Z.** Means Regulation Z as promulgated by the Board of Governors of the Federal Reserve System and codified in 12 CFR 226 et seq., as amended to and including January 1, 2011. (3-29-12)~~

~~08. **Truth in Lending Act.** Means the act set forth in 15 U.S.C.A 1601 et seq., as amended to and including January 1, 2011. (3-29-12)~~

# IDAPA 13 - IDAHO FISH AND GAME COMMISSION

## 13.01.02 - RULES GOVERNING PUBLIC SAFETY

### DOCKET NO. 13-0102-1201

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 36-104(b)(16), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 24, 2012.

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

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

This rule will establish a Mentored Hunting Program for persons interested in trying hunting. Rules are needed to create a special authorization to take wildlife, describe a mentee, and describe a mentor for the Mentored Hunting Program. Chapter name is being changed to "Rules Governing Hunter Education and Mentored Hunting" to more adequately reflect the program.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this is a new program and there are no identifiable representatives for persons interested in trying hunting for the first time.

**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

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule and how an electronic copy can be obtained or, if otherwise unavailable, where copyrighted or other proprietary materials may be obtained: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut  
P.O. Box 25, Boise, Idaho 83707  
(208) 334-3715  
Fax (208) 334-2148

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0102-1201**

**IDAPA 13**  
**TITLE 01**  
**CHAPTER 02**

**13.01.02 - RULES GOVERNING ~~PUBLIC SAFETY~~ HUNTER EDUCATION AND MENTORED HUNTING**

**000. LEGAL AUTHORITY.**

The Idaho Fish and Game Commission is authorized under Sections 36-103, 36-104(b) and 36-412, Idaho Code, to adopt rules concerning education programs in hunting and archery. The Idaho Fish and Game Commission is authorized to adopt rules concerning a mentored hunting program under Idaho Code Section 36-1508(b). (3-20-04)( )

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited in full as IDAPA 13.01.02.000, et seq., Rules of the Idaho Fish and Game Commission, IDAPA 13.01.02, "Rules Governing ~~Public Safety~~ Hunter Education and Mentored Hunting." (3-20-04)( )

**02. Scope.** These rules establish criteria for education programs in hunting and archery, and for mentored hunting. (3-20-04)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS.**

**01. Accompanied.** The term "accompanied" as used in the requirement for a Youth Hunter Education Graduate License holder or Youth Small Game License holder or the Mentored Hunting program shall mean close enough to be within normal conversation or hearing range without shouting or the aid of electronic devices. (3-20-04)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**101. MENTORED HUNTING PROGRAM.**

Nothing in this section shall be construed as altering the requirements of Section 36-411, Idaho Code, to obtain a valid hunting license, or any other statutory or rule requirements for the take of wildlife. ( )

**01. Hunting Passport.** A Hunting Passport is a special authorization for any person to take wildlife when they are accompanied by a mentor and participating in the Mentored Hunting Program. ( )

**a.** Any person must obtain a Hunting Passport from the Department or a licensed vendor to participate as a mentee in the Mentored Hunting Program. ( )

**b.** Hunter education certification is not required for any person to possess a hunting passport. ( )

- c.** A Hunting Passport shall expire December 31 of the year for which it is valid. ( )
- d.** Any person who has possessed a Hunter Passport may not apply for a Hunter Passport in any subsequent year. ( )
- 02. Eligibility of Mentee.** ( )
- a.** Any person who has not previously possessed a hunting license or equivalent license in any other state may possess a Hunting Passport to participate in the Mentored Hunting Program as a mentee. ( )
- b.** Any mentee possessing a Hunting Passport is eligible to possess general big game, turkey, and sandhill crane tags if the mentee is qualified to participate in the hunt. ( )
- c.** Any mentee possessing a Hunting Passport is not eligible to possess a control hunt tag but may be designated for a Landowner controlled hunt tag if the mentee is qualified to participate in the hunt. ( )
- d.** Any mentee with a Hunting Passport shall be twelve (12) years of age to hunt big game. ( )
- e.** Any mentee with a Hunting Passport must be accompanied by a mentor as provided in Subsection 101.03.a. ( )
- f.** Any person shall be eight (8) years or older to possess a Hunting Passport. ( )
- g.** Any mentee must possess on his person a hunting passport while hunting and produce the same for inspection upon request of a conservation officer or any other person authorized to enforce fish and game laws. ( )
- 03. Eligibility of Mentor.** ( )
- a.** Any person who possesses a valid Idaho hunting license and who is eighteen (18) years or older may participate in the Mentored Hunting Program as a mentor. ( )
- b.** A mentor may not accompany more than two (2) mentees at one (1) time that are participating in the Mentored Hunting Program. ( )
- c.** A mentor may hunt while participating in the Mentored Hunting Program if the mentor is qualified to participate in the hunt. ( )
- 1042. -- 999. (RESERVED)**



# IDAPA 13 - IDAHO FISH AND GAME COMMISSION

## 13.01.04 - RULES GOVERNING LICENSING

### DOCKET NO. 13-0104-1201

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is August 27, 2012.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b) and 36-408(9), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 24, 2012.

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:

2012 Senate Bill no. 1256 created the Governor's Wildlife partnership Tags. A portion of these rules address these new auction tags. Address a rule change that allows for equitable adjustments in resident and nonresident elk tag allocation where resident demand exceeds tag availability and nonresident tags are undersubscribed. Address a rule change to sell leftover nonresident deer or elk tags as a second tag to residents and nonresidents earlier than September 1.

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

The temporary rule complies with an amendment to governing law and confers a benefit to certain hunters.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because rules to implement the Governor's Wildlife Partnership Tags are needed because of statutory amendment, there are no identifiable representatives of nonresident hunters, and resident and nonresident hunters are not likely to reach consensus on tag allocation.

**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

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule and how an electronic copy can be obtained or, if otherwise unavailable, where copyrighted or other proprietary materials may be obtained: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut  
P.O. Box 25, Boise, Idaho 83707  
(208) 334-3715, Fax (208) 334-2148

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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 13-0104-1201**

**505. DEER AND ELK TAG ALLOCATION.**

**01. Allocation of Tags.** Pursuant to Idaho Code, Section 36-408, the Fish and Game Commission may allocate a number of deer and/or elk tags for use by hunters with signed agreements with licensed outfitters in zones with limited numbers of tags. ~~The allocation will be calculated on a zone basis with reductions or increases in hunting opportunities to be proportionate among resident hunters, nonoutfitted nonresident hunters, and outfitted hunters.~~ (8-27-12)T

**a.** When the number of hunters in a general hunt unit or zone becomes restricted, the Department will calculate the initial number of allocated tags for each zone using the Idaho Outfitters and Guides Licensing Board's records of average historic use during the previous five (5) year period. Where it is biologically feasible, any reductions in the number of tags available within a zone which exceeds twenty percent (20%) will be spread over a three (3) year period with a maximum reduction of fifty percent (50%) taken in the first year and twenty-five percent (25%) in the second year. ~~When an area becomes controlled, hunt application and eligibility rules will apply to allocated tags in controlled hunts. Only those units or zones with licensed outfitted areas with historic use will be considered for tag allocation.~~ (3-8-07)(8-27-12)T

**b.** The allocation of tags will be calculated on a zone basis. Any reduction or increase in hunting opportunities will be proportionate among non-outfitted hunters and outfitted hunters and will be proportionate among resident and non-resident hunters; EXCEPT where such reduction would result in an allocation of greater than twenty-five percent (25%) for non-resident hunters, the Commission may reduce the allocation for non-resident hunters to a percentage of not less than twenty-five percent (25%). (8-27-12)T

**02. Controlled Hunt Areas.** Only those controlled hunt areas with historic licensed deer and/or elk outfitted area(s) may be considered for a tag allocation. Hunt application and eligibility rules will apply to allocated tags in controlled hunts. The allocation will be calculated on a controlled hunt area basis with reductions or increases in hunting opportunities to be proportionate among resident hunters, non-outfitted nonresident hunters, and outfitted hunters. (4-7-11)(8-27-12)T

**a.** The number of allocated tags will be in addition to the number of tags authorized by the Commission within each controlled hunt area with historic licensed deer and/or elk outfitter areas. (4-7-11)

**b.** Prior to submitting an application for an outfitter allocated controlled hunt, the applicant must have a written agreement with an outfitter licensed in the hunt area. Successful applicants of an outfitter allocated controlled hunt must hunt with an outfitter licensed for the hunt area. The outfitter must purchase the successful applicant's controlled hunt tag by August 20. (4-7-11)

**c.** Successful applicants who do not want to participate in the outfitted hunt can decline the hunt upon written notification to the Department. Those declining the hunt will then be eligible to participate in a general season or leftover controlled hunt. Those drawing an outfitted controlled hunt and then declining the controlled hunt will be subject to the appropriate waiting period. (5-3-03)

**d.** Successful applicants that do not secure the services of an Idaho licensed outfitter and have not purchased the controlled hunt tag by August 20 will forfeit the opportunity to purchase a controlled hunt tag. The forfeited controlled hunt tag will then be listed as a leftover controlled hunt tag. The Department will inform the Idaho Outfitters and Guides Board that a leftover controlled hunt tag is available. After securing a client, the outfitter(s) may then purchase the leftover controlled hunt tag at a Department regional or headquarters office. (4-7-11)

**e.** The number of allocated tag(s) will be determined by using one (1) of the following options: (4-7-11)

**i.** The number of allocated tags available within the controlled hunt area will be no less than one (1) tag and no more than three percent (3%); or (4-7-11)

**ii.** The number of tags available within the controlled hunt area will be based on the average historic use during the previous five (5) year period and calculated tag numbers will be rounded up when controlled hunt tags equal or exceed zero point six (0.6) and rounded down when controlled hunt tags are less than zero point six (0.6); or (4-7-11)

**iii.** No tags will be allocated. (7-1-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**600. NONRESIDENT DEER AND ELK TAG QUOTAS.**

**01. Tag Quotas.** The following number of deer tags and elk tags shall be set aside annually and reserved for sale to nonresidents: (3-20-97)

**a.** Fourteen thousand (14,000) regular or White-tailed deer tags; (3-29-10)

**b.** Twelve thousand eight hundred fifteen (12,815) A or B elk tags for all zones; (3-20-04)

**c.** One thousand five hundred (1,500) White-tailed deer tags available only upon sell out of deer tags referenced in Subsection 600.01.a. of these rules. (3-29-10)

**02. Exceptions.** Sales of nonresident deer and elk tags to the following persons shall not be counted in the quota: (7-1-93)

**a.** Unqualified Residents: Persons who have moved into Idaho and by notarized affidavit show proof of their intent to become bona fide Idaho residents but are not yet qualified to purchase a resident license. (7-1-93)

**b.** Designated Buyers: Nonresident tag buyers who return their unused nonresident deer or elk tag and a notarized affidavit stating that the tag buyer has not hunted may designate another nonresident to purchase an additional tag. If the original buyer does not make a designation and has retained an outfitter or guide, the outfitter or guide may make the designation. The designated buyer must pay the regular fee for the replacement tag. If no designation is made by either the original buyer or the outfitter or guide, the Department may sell the replacement tag on a first-come, first-serve basis. (7-1-93)

**c.** Successful nonresident controlled hunt applicants who have not purchased a tag as of the date of the controlled hunt drawing. (7-1-93)

**d.** Junior mentored tag holders. (3-20-04)

**03. Refunds.** The fee for any nonresident license (as defined in Section 36-202(z), Idaho Code) shall not be refunded for any reason except as follows. (7-1-98)

**a.** Hunting license and general season deer and elk tag refunds due to death, illness/injury or military deployment of licensee. Non-resident general season deer or elk tag fees and prerequisite hunting license fee and controlled hunt deer and elk tag fees may be refunded for death of licensee; illness or injury of licensee which totally disabled the licensee for the entire length of any applicable hunting season; or military deployment of licensee due to an armed conflict. Refund must be substantiated by death certificate, published obituary, written justification by a licensed medical doctor, copy of military orders, or other similar substantiating documents. The hunting license fee will not be refunded if it was used to apply for any controlled hunt or to purchase a turkey, mountain lion, or bear tag. The amount refunded will be the amount of the applicable deer or elk tag and hunting license less all issuance fees and a fifty dollar (\$50) processing fee. The refund request must be postmarked on or before December 31 of the calendar year in which the license and tags were valid. (4-6-05)

**b.** General season and controlled hunt deer and elk tag refunds for other than death, illness/injury, or military deployment of licensee. Non-resident general season and controlled hunt deer or elk tag fees may be refunded for any reason other than death of the licensee; illness or injury of licensee that totally disables the licensee for the entire length of all applicable seasons; or military deployment of licensee due to an armed conflict. The request for the refund must be postmarked in the year in which the tag is valid. The hunting license fee will not be refunded. The refund will be based on the following sliding scale as a percent of the deer or elk tag fee.

<b>Postmarked</b>	<b>Percent of Fee Refunded</b>
Before April 1	75%
In April through June	50%
In July and August	25%
September through December	0%

(4-6-05)

**c.** Department Error. The Department determines that a Department employee made an error in the issuance of the license. (7-1-98)

**d.** Submission Requirements. All refund requests must be in writing and be accompanied with the original copy of the license or tag. (7-1-98)

**e.** Effective. These changes will be effective with the 1997 licenses and tags. (7-1-98)

**04. Sale of Unsold Nonresident Deer and Elk Tags to Residents.** Any unsold nonresident deer or elk tags may be sold to residents and to nonresidents as a second tag, at the nonresident deer or elk tag price, beginning ~~September~~ August 1. All privileges and restrictions associated with the use of the nonresident deer or elk tag will apply equally to residents who purchase a nonresident deer or elk tag. ~~(3-15-02)~~ (8-27-12)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**701. GOVERNOR'S WILDLIFE PARTNERSHIP TAGS.**

**01. Application of Big Game Rules.** All rules in IDAPA 13.01.08, "Rules Governing the Taking of Big Game Animals in Idaho," shall apply to recipients of Governor's Wildlife Partnership Tags other than as specified in this Section 701. (8-27-12)T

**02. Eligibility.** (8-27-12)T

**a.** In order to be eligible to bid on a Governor's Wildlife Partnership Tag, a person must be eligible to purchase an Idaho hunting or combination license. (8-27-12)T

**b.** A person is eligible to receive only one (1) Governor's Wildlife Partnership Tag in the same year. (8-27-12)T

**c.** A person is not eligible to receive a Governor's Wildlife Partnership Tag for a bighorn sheep, moose, or mountain goat if he is not eligible, based on prior harvest of that species, to apply for an equivalent controlled hunt under IDAPA 13.01.08, "Rules Governing the Taking of Big Game Animals in the State of Idaho," Subsection 260.03. A person who has had a controlled hunt tag for a bighorn sheep, moose, or mountain goat, but who has been unsuccessful in taking that species, is eligible to receive a Governor's Wildlife Partnership Tag for that species the following year. (8-27-12)T

**d.** There is no waiting period for eligibility for Governor's Wildlife Partnership Tags for elk, deer, or pronghorn. (8-27-12)T

**03.** **Validity of Tag.** Each Governor's Wildlife Partnership Tag shall be valid for one (1) designated species annually and within the timeframe and area prescribed by the Commission. (8-27-12)T

**04.** **License and Controlled Hunt Tag.** (8-27-12)T

**a.** A hunting license and controlled hunt tag will be provided to the successful bidder from the net proceeds of the Governor's Wildlife Partnership Tag auction. (8-27-12)T

**b.** The successful bidder for a Governor's Wildlife Partnership Tag must file a notarized affidavit within fifteen (15) days of the successful bid if the hunting license and tag are to be designated to another individual. (8-27-12)T

**c.** If a recipient of a Governor's Wildlife Partnership Tag draws a controlled hunt tag for that species for the same year, the controlled hunt tag shall be returned to the Department and voided and the tag fees refunded, unless the tag is a controlled depredation hunt tag or a controlled hunt extra tag. The recipient of a Governor's Wildlife Partnership Tag may purchase second, extra, or leftover tags if a holder of a controlled hunt tag for deer, elk, or pronghorn is allowed to do so under IDAPA 13.01.08, "Rules Governing the Taking of Big Game Animals in the State of Idaho," Subsection 260.01. (8-27-12)T

**d.** Any person who receives a Governor's Wildlife Partnership Tag for bighorn sheep, mountain goat or moose, and who is otherwise eligible to apply for a deer, elk or pronghorn controlled hunt tag, and who draws such a tag, shall be allowed to hunt for those species during the same year the Governor's Wildlife Partnership Tag is valid. (8-27-12)T

~~7042~~. -- 799. (RESERVED)

# IDAPA 13 - IDAHO FISH AND GAME COMMISSION

## 13.01.04 - RULES GOVERNING LICENSING

### DOCKET NO. 13-0104-1202

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 36-104(b) and 36-1101, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 24, 2012.

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 proposed rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Commission has received comments about the equitable distribution of Landowner Appreciation Tags. The proposed rules make the following changes:

1. Implement a one year waiting period for antlered deer and elk LAP hunts oversubscribed by a ratio of 2:1 or greater;
2. Cap LAP allocation to an additional 10% of regular controlled hunt permit levels in all LAP hunts; and
3. Define "designated agent(s)" as referenced in Idaho Code Section 36-104(b)(5)(B) as immediate family, youth, disabled veterans, and/or direct employees as valid designations.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), negotiated rulemaking was not conducted because the Landowner Appreciation Program and the distribution of LAP tags are controversial. Landowners, hunters and sporting groups are unlikely to reach a consensus.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut  
P.O. Box 25, Boise, Idaho 83707  
(208) 334-3715, Fax (208) 334-2148

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0104-1202**

**010. DEFINITIONS.**

These definitions will provide clarity and consistency in enforcement of these rules. (7-1-93)

**01. Authorized Corporate Representative.** Any shareholder in a corporation, designated in writing by the corporation as the eligible applicant, who is in actual physical control of the eligible property. (7-1-93)

**02. Blind Person.** A blind person is one who has a medically documented loss or impairment of his or her vision and includes any person whose visual acuity with correcting lens does not exceed twenty/two hundred (20/200) in the better eye, or whose vision in the better eye is restricted to a field which subtends an angle of not greater than twenty (20) degrees. (7-1-93)

**03. Domicile.** The term “domicile” means the place where an individual has his true, fixed, permanent home and to which place he has the intention of returning whenever he is absent. An individual can have several dwelling places, but only one (1) domicile. Factors to consider to establish domicile include, but are not limited to: (7-1-93)

**a.** What address does the person use on tax returns and where does the person file a state resident income tax return? (7-1-93)

**b.** Where is the person registered to vote? (7-1-93)

**c.** Where does the person and his immediate family live? (7-1-93)

**d.** Where does the person have his mail sent or forwarded to? (7-1-93)

**e.** Does the person remain listed in the telephone directory? (7-1-93)

**f.** Where does he register his automobiles? (7-1-93)

**g.** Where has the person claimed a homeowner exemption on a personal residence? (7-1-93)

**h.** Where does he have a driver’s license? (7-1-93)

**i.** Where are his regular physicians and dentists located? (7-1-93)

**04. Direct Employee.** Any person who is on the payroll of the eligible landowner, partnership, or corporation and is directly involved with the production of goods and services from the registered property. ( )

**045. Disabled.** A person is disabled if they are deemed disabled by one (1) or more, but not necessarily all of the following: the railroad retirement board pursuant to Title 45 of the United States Code, or certified as eligible for Federal Supplemental Security Income (SSI); or Social Security Disability Income (SSDI); or a nonservice-connected veterans pension; or a service-connected veterans disability benefit with forty percent (40%) or more disability; or if a physician has certified any of the following - that a person has lost the use of one (1) or both lower extremities or both hands, or is unable to walk two hundred (200) feet or more unassisted by another person, or is unable to walk two hundred (200) feet or more without the aid of a walker, cane, crutches, braces, prosthetic device or a wheelchair, or is unable to walk two hundred (200) feet or more without great difficulty or discomfort due to the following impairments - neurological, orthopedic, respiratory, cardiac, arthritic disorder, blindness, or the loss of function or absence of a limb. (3-8-07)

**056. Eligible Applicant.** A physically disabled person certified by a physician licensed in the state in which the disabled person resides, as meeting one (1) or more of the criteria set forth in Section 36-1101(b), Idaho Code. (5-8-09)

~~067~~. **Eligible Property.** At least three hundred twenty (320) acres of land in one (1) controlled hunt unit determined by the Department to be valuable for habitat or propagation purposes for deer, elk, and/or pronghorn, whether owned by one (1) or more persons, a partnership, or corporation. It shall not include any government lands. (4-7-11)

~~08~~. **Immediate Family Member.** Spouse, parent, child, brother, sister, grandparent, aunt, uncle, niece, nephew, stepchild, grandchild, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law and sister-in-law. ( )

~~079~~. **Landowner.** Any person or corporation whose name appears on a deed as the owner of eligible property or whose name appears on a contract for sale of eligible property as the purchaser, and any affiliates, management companies, associated entities, wholly-owned subsidiaries, corporations, or limited liability corporations wherein fifty percent (50%) or more of the ownership or controlling interest is maintained by a single individual, partnership or corporation. (4-7-11)

~~0810~~. **Permanent Disability.** Permanent disability is defined as a medically determinable physical impairment, which a physician has certified that the condition has no expectation for a fundamental or marked change at any time in the future. (3-8-07)

~~0911~~. **Physician.** A person licensed to practice medicine pursuant to the Idaho Medical Practice Act (Sections 54-1801 through 54-1820, Idaho Code), or equivalent state licensing authority if the person is not licensed to practice in Idaho. (5-8-09)

~~102~~. **Qualified Organization.** The term “Qualified Organization” is defined in Section 36-408(7), Idaho Code. (3-29-12)

~~113~~. **Resident.** The term “resident” is defined in Section 36-202(s), Idaho Code. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**400. LANDOWNER APPRECIATION PROGRAM.**

**01. Eligible Applicants.** Eligible applicants must be registered with the Department and are limited to landowners. Landowners not complying with prohibitions listed in Subsection 400.08, of these rules, shall not be eligible to participate in the landowner appreciation program for three (3) years. (4-7-11)

**02. Hunt Units.** Landowner Appreciation Program controlled hunt tags shall be issued only for those controlled hunt units designated by the Director as eligible for such permits. (4-7-11)

**03. Qualifying Property.** Only property that is used by and provides significant habitat values for deer, elk or pronghorn qualifies for the Landowner Appreciation controlled hunt tag program. Landowners may receive Landowner Appreciation controlled hunt tags only for the species and sex that use the property. (4-7-11)

**04. Applications for Landowner Appreciation Controlled Hunt Tags.** Applications for landowner appreciation controlled hunt tag(s) shall be on a form prescribed by the Department. Applicants must be registered with the Department and shall sign the application. (4-7-11)

**a.** Applications from landowners with six hundred forty (640) acres or more will be accepted on or after June 15 of each year. Applications received at the Headquarters Office of the Idaho Department of Fish and Game or postmarked not later than July 15 of each year will be entered in the random drawing for tags. Each application will be entered in the random drawing one (1) time based upon each six hundred and forty (640) acres of eligible property registered by the landowner that are within the hunt area. For example, if a landowner has six thousand four hundred (6,400) eligible acres, the application will be entered into the random drawing ten (10) times. (4-7-11)



**b.** One (1) application may be submitted by a landowner with eligible property consisting of six hundred forty (640) acres to four thousand nine hundred ninety-nine (4,999) acres. A second application may be submitted for eligible property consisting of five thousand (5,000) acres or more. (4-7-11)

**05. Left Over Tags.** Landowners with three hundred twenty (320) acres or more may apply for left-over tags following the random draw. Written applications will be accepted after August 15 of each year on a first-come, first-served basis. Applications must be accompanied by the appropriate application fee as specified in Section 36-416, Idaho Code. (4-7-11)

**06. Property and Applicant Registration.** (5-15-95)

**a.** Prior to any eligible applicant applying for a Landowner Appreciation Program controlled hunt, the qualifying property and eligible applicant must be registered with the Department. Registering landowners must notify the Department of any changes in property or applicant eligibility. (4-7-11)

**b.** Registration of property and eligible applicant must be on a form prescribed by the Department. The landowner must submit the registration form and a copy of the deed(s), and the most recent tax assessment(s), describing the eligible property showing the name(s) of the owner(s), and a map of eligible property to the Department regional office. Department personnel will certify the registration and land description and return a copy to the landowner. (4-5-00)

**c.** If the person registering is an authorized corporate or partnership representative, he shall submit with his registration written verification from the board of directors, partnership, or an officer of the corporation, other than himself, verifying that he is authorized to register the property and eligible applicants. (4-5-00)

**07. Issuance of Controlled Hunt Tag(s).** (4-7-11)

**a.** Once the Department has determined the number of controlled hunt tags to be issued in any controlled hunt unit, an additional ten percent (10%) of the number of controlled hunt tags MAY be issued as Landowner Appreciation Program tags. ~~In subsequent years up to twenty five percent (25%) of the number of controlled hunt tags MAY be issued only if the hunt is over subscribed by eligible Landowner Appreciation Program applicants.~~ (4-7-11)( )

**b.** Where the number of landowner appreciation applicants exceeds the number of landowner appreciation controlled hunt tags available in a unit, successful applicants will be determined by drawing. All eligible landowners in the drawing will be considered for one (1) tag before any landowner is eligible for a second tag. (4-7-11)

**c.** No more than two (2) Landowner Appreciation Program controlled hunt tags may be issued to any eligible landowner. (4-7-11)

**d.** Only one (1) leftover Landowner Appreciation Program controlled hunt tag may be issued for eligible property consisting of between three hundred twenty (320) and six hundred thirty nine (639) acres within the hunt area designated by the Director with Landowner Appreciation Program controlled hunt tags. Only one (1) landowner appreciation program controlled hunt tag may be issued for eligible property consisting of between six hundred forty (640) and four thousand nine hundred ninety-nine (4,999) acres within the hunt area designated by the Director with Landowner Appreciation Program controlled hunt tags. One (1) additional controlled hunt tag may be issued to a landowner or designated agent(s) for eligible property in excess of five thousand (5,000) acres within the hunt area designated by the Director with Landowner Appreciation Program controlled hunt tags. No landowner or designated agent(s) is eligible to receive more than one (1) controlled hunt tag for one (1) species in a calendar year. (4-7-11)

**e.** A successful landowner, corporate or partnership representative drawing a landowner appreciation program controlled hunt tag may designate the controlled hunt tag to ~~whom the controlled hunt tag will be issued pursuant to Subsection 400.08 of this rule.~~ an eligible: (4-7-11)( )

- i. Immediate family member: ( )
- ii. Youth who is younger than eighteen (18) years of age: ( )
- iii. Direct employee; or ( )
- iv. Disabled active, former, or retired member of the United States Armed Forces. ( )
- f. Designation of a landowner appreciation program controlled hunt tag is subject to Subsection 400.08 of this rule. ( )

**08. Prohibitions.** Landowner Appreciation Program controlled hunt tags shall not be sold or marketed. (4-7-11)

**09. Application of Controlled Hunt Restrictions.** (7-1-93)

a. The restriction that applying for a moose, bighorn sheep, or mountain goat controlled hunt makes the applicant ineligible to apply for any other controlled hunt shall not apply to persons who are otherwise eligible to apply for a landowner appreciation program controlled hunt tag. (4-7-11)

b. Landowner appreciation program controlled hunt tags issued to non-residents shall not be considered as part of the non-resident quota. (4-7-11)

c. Landowner appreciation program controlled hunt tags are exempt from the one (1) year waiting periods applicable for certain antlered deer; and elk and pronghorn permits tags; EXCEPT: the one (1) year waiting period will apply in those landowner appreciation program controlled hunts where the number of eligible landowners exceed the number of tags equal to or more than a ratio of two to one (2:1). (~~4-7-11~~)( )

d. The one (1) year waiting period applicable for certain antlered deer and elk Landowner Appreciation Program tags does not apply to left-over tags. ( )

**10. Special Restrictions.** Any person hunting with a Landowner appreciation program controlled hunt tag shall hunt only within the boundaries described in the hunt area designated by the Director. Only valid, current-year controlled hunt deer, elk, or pronghorn tags may be used in conjunction with a landowner appreciation program. No person shall kill more than one (1) deer, elk or pronghorn during a calendar year EXCEPT: (4-7-11)

a. Depredation Hunts. In depredation hunts, one (1) additional deer, elk or pronghorn may be taken by persons holding tags for those hunts; EXCEPT: those depredation hunters who were selected for depredation hunts prior to the controlled hunt season for the unit(s) in which they hold a controlled hunt tag must include any animal they harvest within the restrictions imposed by the controlled hunt tag. (4-7-11)

b. Extra Tag Hunts. In extra tag hunts, one (1) additional deer, elk or pronghorn may be taken by persons holding tags for those hunts. (4-7-11)

c. Limits on Take - Deer, Elk, Pronghorn. In no event shall any person take more deer, elk or pronghorn in a calendar year than the number of tags the person legally possesses for each species. (4-7-11)

# IDAPA 13 - IDAHO FISH AND GAME COMMISSION

## 13.01.07 - RULES GOVERNING THE TAKING OF UPLAND GAME ANIMALS

DOCKET NO. 13-0107-1201

### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 36-104(b) and 36-1101, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 24, 2012.

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 proposed rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rescind the Motorized Hunting Rule for these species.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), negotiated rulemaking was not conducted because the Motorized Hunting Rule is controversial. Hunters who use an ATV are unlikely to reach a consensus with hunters opposed to ATVs.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut  
P.O. Box 25, Boise, Idaho 83707  
(208) 334-3715  
Fax (208) 334-2148

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0107-1201

**~~101. MOTORIZED VEHICLE USE RESTRICTIONS.~~**

~~The use of motorized vehicles by hunters as an aid to hunting upland game animals is restricted in certain areas. This use restriction is in addition to all federal, state and local laws, rules, regulations, ordinances and orders; including, but not limited to, any motorized vehicle licensing, registration, and permitting requirements and traffic laws. Hunters must comply with all motorized vehicle limits or prohibitions instituted by the landowner or land manager. Also, this use restriction rule is not an exception from, and is in addition to, the statutory prohibition against hunting from or by the use of any motorized vehicle set forth in Section 36-1101(b)(1), Idaho Code. (4-6-05)~~

~~**01. Use Restriction.** In designated areas and hunts, hunters may only use motorized vehicles on established roadways which are open to motorized traffic and capable of being traveled by full-sized automobiles. Any other use by hunters is prohibited. All off-road use by hunters is prohibited. (4-6-05)~~

~~**02. Exceptions.** This use restriction rule shall not apply to the following permissible motorized vehicle uses: (4-6-05)~~

~~**a.** Holders of a valid Disabled Motor Vehicle Hunting Permit may use a motorized vehicle as allowed by the land owner or manager. (5-8-09)~~

~~**b.** Hunters may use a motorized vehicle to retrieve downed game if such travel is allowed by the land owner or manager. (4-6-05)~~

~~**c.** Hunters may use a motorized vehicle to pack camping equipment in or out if such travel is allowed by the land owner or manager; however, hunters shall not hunt while packing camping equipment. (4-6-05)~~

~~**d.** Private landowners, their authorized agents and persons with written landowner permission may use a motorized vehicle on their private land; however, they may not hunt from or by the use of any motorized vehicle as prohibited by Section 36-1101(b)(1), Idaho Code. (4-6-05)~~

~~**03. Restricted Areas and Hunts.** This motorized vehicle use restriction shall apply to identified areas and hunts in all Big Game Management Units. The hunts and areas with a motorized vehicle use restriction are identified in the Commission's Big Game Season Proclamation and Upland Game Season Proclamation, which are published in a brochure available at department offices and license vendors. (4-6-05)~~

~~**04. Defined Terms.** (4-6-05)~~

~~**a.** A full-sized automobile shall be defined as any motorized vehicle with a gross weight in excess of one thousand five hundred (1,500) pounds. (4-6-05)~~

~~**b.** An established roadway shall be defined as any road that is established, built, maintained, approved or designated by any governmental entity or private landowner for the purpose of travel by full-sized automobiles. An established roadway shows evidence of repeated use by full-sized automobiles, and may include a traveled way of natural earth with depressed wheel tracks and little or no vegetation in the wheel tracks. (4-6-05)~~

~~**c.** A hunter shall be defined as a person engaged in the activity of hunting as defined in Section 36-202(j), Idaho Code. (4-6-05)~~

**102**~~1~~. -- 199. (RESERVED)

## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.08 - RULES GOVERNING THE TAKING OF BIG GAME ANIMALS IN THE STATE OF IDAHO

#### DOCKET NO. 13-0108-1201

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is July 16, 2012.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b) and 36-1101, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 24, 2012.

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:

Allow the use of a rimfire weapon to dispatch a wolf in a trap or snare, and allow that wolves may be dispatched in a trap or snare outside of big game hunting hours. Address what trap sets are legal for wolf trapping. Clean up some rules to allow consolidation of wolf trapping rules in another rules chapter.

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

The temporary rule confers a benefit to certain hunters and trappers, and are needed for 2012 wolf hunting and trapping seasons.

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because wolf hunting and trapping is a very divisive topic. There is a lack of identifiable representatives of the many affected interests, and the various affected interests are not likely to reach a consensus.

**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

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game

600 S. Walnut  
P.O. Box 25, Boise, Idaho 83707  
(208) 334-3715, Fax (208) 334-2148

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 13-0108-1201**

~~271. **WOLF TRAPPING—MANDATORY WOLF TRAPPER EDUCATION CLASS.**~~

~~Individuals interested in trapping wolves must purchase a trapping license and successfully complete a wolf trapping education class held by the Idaho Department of Fish and Game prior to trapping for wolves. A certificate of completion and trapping license will be required to purchase tags for wolf trapping. Trappers who complete the class will not be required to take the class again in the future. (3-29-12)~~

272~~1~~. -- 299. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

**410. UNLAWFUL METHODS OF TAKE.**

No person shall take big game animals as outlined in this section. (7-1-93)

**01. Firearms.** (7-1-93)

**a.** With any firearm that, in combination with a scope, sling, and/or any other attachments, weighs more than sixteen (16) pounds. (7-1-93)

**b.** With any shotgun using any shot smaller than double-aught (#00) buck. (7-1-93)

**c.** With any rimfire rifle, rimfire handgun or any muzzleloading handgun, EXCEPT for mountain lion ~~(7-1-93)~~ and trapped gray wolf. (7-16-12)T

**d.** With a fully automatic firearm. (10-26-94)

**e.** With any electronic device attached to, or incorporated in, the firearm (including handguns and shotguns) or scope; except scopes containing battery powered or tritium lighted reticles are allowed. (4-2-08)

**02. Bows, Crossbows, Arrows, Bolts, Chemicals or Explosives.** (3-20-97)

**a.** With arrows or bolts having broadheads measuring less than seven-eighths (7/8) inch in width and having a primary cutting edge less than fifteenth-thousandths (0.015) inch thick. (7-1-93)

**b.** With any bow having a peak draw weight of less than forty (40) pounds up to or at a draw of twenty-eight (28) inches, or any crossbow having a peak draw weight of less than one hundred-fifty (150) pounds. (3-20-97)

**c.** With any chemicals or explosives attached to the arrow or bolt. (7-1-93)

**d.** With arrows or bolts having expanding broadheads. (7-1-93)

**e.** With arrows or bolts having barbed broadheads. A barbed broadhead is a broadhead which has any portion of the rear edge of the broadhead forming an angle less than ninety (90) degrees with the shaft or ferrule. (7-1-93)

**f.** With any electronic or tritium-powered device attached to, or incorporated into, an arrow, bolt, crossbow, or bow (except nonmagnifying scopes containing battery powered or tritium lighted reticles may be used by disabled archery permit holders). (5-8-09)

- g.** With any bow capable of shooting more than one (1) arrow at a time. (7-1-93)
- h.** With any compound bow with more than eighty-five percent (85%) let-off. (4-2-08)
- i.** With an arrow and broadhead, or bolt and broadhead, with a combined total weight of less than three hundred (300) grains. (4-2-08)
- j.** With an arrow less than twenty-four (24) inches or a crossbow bolt less than twelve (12) inches in length from the broadhead to the nock inclusive. (4-2-08)
- k.** With an arrow wherein the broadhead does not proceed the shaft and nock. (3-30-01)
- l.** During an *Archery Only* season, with any firearm, crossbow (except holders of handicapped archery permits), or other implement other than a longbow, compound bow, or recurve bow, or: (3-30-07)

  - i.** With any device attached that holds a bow at partial or full draw (except holders of handicapped archery permits). (3-30-07)
  - ii.** With any bow or crossbow equipped with magnifying sights. (3-20-97)
- m.** During a *Traditional Archery Only* season, with any firearm, crossbow, or other implement other than a longbow or recurve bow, or: (3-15-02)

  - i.** With an arrow not constructed of wood or fletched with non-natural material. (3-15-02)
  - ii.** With any bow equipped with sights. (3-15-02)
- n.** With any crossbow pistol. (3-20-97)
- 03. Muzzleloaders.** (7-1-93)

  - a.** With a muzzleloading rifle or musket which is less than forty-five (.45) caliber for deer, pronghorn, mountain lion, or gray wolf, or which is less than fifty (.50) caliber for elk, moose, bighorn sheep, mountain goat, or black bear. (4-7-11)
  - b.** With any electronic device attached to, or incorporated in, the muzzleloader. (3-30-01)
  - c.** During a *Muzzleloader Only* season, with any firearm, muzzleloading pistol or other implement other than a muzzleloading rifle or musket which: (7-1-93)

    - i.** Is at least forty-five (.45) caliber for deer, pronghorn, mountain lion, or gray wolf, or at least fifty (.50) caliber for elk, moose, bighorn sheep, mountain goat or black bear. (4-7-11)
    - ii.** Is capable of being loaded only from the muzzle. (7-1-93)
    - iii.** Is equipped only with open or peep sights. (7-1-93)
    - iv.** Is loaded only with loose black powder or, loose Pyrodex or other loose synthetic black powder. Pelletized powders are prohibited. (4-2-08)
    - v.** Is equipped with no more than two (2) barrels. (7-1-93)
    - vi.** Is loaded only with a projectile with a diameter within one hundredth (.01) of an inch of the bore diameter. Sabots are prohibited. (4-2-08)
    - vii.** Is equipped only with flint, musket cap, or percussion cap. 209 primers are prohibite4d. (4-2-08)

- viii. Is equipped with an exposed ignition system. (5-8-09)
- ix. Is loaded only with a patched round ball or conical non-jacketed projectile comprised wholly of lead or lead alloy. Sabots are not allowed. (4-11-06)
- 04. Short-Range Weapon.** During Short-Range Weapon ONLY seasons ONLY the following weapons may be used: (7-1-99)
- a. With any shotgun using any slug or double-aught (#00) or larger buckshot. (7-1-99)
- b. With any muzzleloader that is at least forty-five (0.45) caliber for deer, pronghorn, mountain lion, or gray wolf, or at least fifty (0.50) caliber for elk, moose, bighorn sheep, mountain goat, or black bear. (4-7-11)
- c. With any bow having a peak draw weight of not less than forty (40) pounds up to or at a draw of twenty-eight (28) inches, or any crossbow having a peak draw weight of not less than one hundred fifty (150) pounds. (7-1-99)
- d. With any handgun using straight wall centerfire cartridges not originally developed for rifles. (3-29-10)
- 05. Other.** (7-1-93)
- a. With electronic calls EXCEPT for the hunting of mountain lions, black bears, and wolves in seasons set by Idaho Fish and Game Commission proclamation. (4-7-11)
- b. With any bait including grain, salt in any form (liquid or solid), or any other substance (not to include liquid scent) to constitute an attraction or enticement, with the exception of applicable rules for the black bear baiting permit [and gray wolf trapping](#). See Rules of the Idaho Fish and Game Commission, IDAPA 13.01.17, "Rules Governing the Use of Bait [and Trapping](#) for Taking Big Game Animals"; ~~additionally with the exception that wolves may be trapped or taken near a big game animal that has died naturally and the carcass has not been repositioned for trapping or hunting purposes. Natural causes shall not include any man-caused mortality. Traps or snares may not be set or placed within thirty (30) feet of a carcass of a big game animal.~~ (3-29-12)(7-16-12)T
- c. With dogs, EXCEPT for mountain lion or black bear. See Rules of the Idaho Fish and Game Commission, IDAPA 13.01.15, "Rules Governing the Use of Dogs." (7-1-93)
- d. With any net, snare, trap, chemical, deadfall or device other than legal firearm, archery or muzzleloader equipment; EXCEPT wolves may be trapped or snared in seasons set by Idaho Fish and Game Commission proclamation and subject to all trapping rules in IDAPA 13.01.167. ~~"The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals~~ [Rules Governing the Use of Bait and Trapping for Taking Big Game Animals.](#)" (4-7-11)(7-16-12)T
- e. Within an enclosure designed to prevent ingress or egress of big game animals, including fenced facilities defined as Domestic Cervidae Farms under Section 25-3501, Idaho Code, unless authorized by the director. This rule shall not apply to domestic cervidae which are lawfully privately owned elk, fallow deer, or reindeer. (4-6-05)
- f. With radio telemetry or other electronic tracking devices used as an aid to locate big game animals. This rule does not affect the use of telemetry equipment on hounds or other sporting dogs. (4-7-11)



## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.08 - RULES GOVERNING THE TAKING OF BIG GAME ANIMALS IN THE STATE OF IDAHO

#### DOCKET NO. 13-0108-1202

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is July 16, 2012.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b)2, 36-405(c)(2)(B), and 36-409(c), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 24, 2012.

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:

New laws (2012 House Bill 457 and House Bill 525) allow rules for controlled hunt tag designation to a minor child or grandchild, and for tag exemption for a disabled hunter companion assisting a disabled hunter with taking certain wildlife. These rules set the process for designating any controlled hunt tag to a minor child or grandchild, and exempt a disabled hunting companion from possessing a valid game tag when assisting a disabled hunter with a valid tag taking wildlife.

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

The temporary rule is in compliance with amendments to governing law, and confers a benefit to certain hunters.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these rules implement statutory amendments. There are no identifiable representatives for the parties who may choose to participate in the designation of controlled hunt tags, disabled hunters or disabled hunter companions.

**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

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule and how an electronic copy can be obtained or, if otherwise unavailable, where copyrighted or other proprietary materials may be obtained: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut  
P.O. Box 25, Boise, Idaho 83707  
(208) 334-3715, Fax (208) 334-2148

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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 13-0108-1202**

**201. TAG EXCEPTION FOR COMPANION TO DISABLED HUNTER.**

**01. Assistance of Disabled Hunter by Designated Companion.** Any disabled hunter possessing a valid disabled combination license or a disabled archery permit or a disabled hunt motor vehicle permit and who possesses a valid tag or who is a disabled veteran participating in a hunt as provided in Section 36-408(7), Idaho Code, may be accompanied, close enough to be within normal conversation or hearing range without shouting or the aid of electronic devices, by a designated companion who may assist the disabled hunter with taking big game. (7-16-12)T

**02. Valid License and Applicable Special Weapon Permit.** A companion to a disabled hunter must have a valid license and applicable special weapon permit when assisting a disabled hunter with taking big game. (7-16-12)T

**03. Excepted From Tag Possession.** A companion assisting a disabled hunter is excepted from tag possession to take a big game animal wounded by a disabled hunter. All other applicable rules governing IDAPA 13.01.08, "Rules Governing the Taking of Big Game Animals in the State of Idaho," shall apply. (7-16-12)T

**04. Validation and Attachment of Tag.** The companion to a disabled hunter may validate and attach the disabled hunter's tag on a big game animal per Subsection 320.01. (7-16-12)T

**05. Accompanying the Disabled Hunter.** The companion to a disabled hunter shall accompany the disabled hunter while hunting. Once the disabled hunter has wounded a big game animal, the companion does not need to be accompanied by the disabled hunter while taking an animal wounded by the disabled hunter or while tagging or retrieving a downed animal on behalf of the disabled hunter. (7-16-12)T

**06. Written Statement of Designation.** While taking a wounded big game animal to assist a disabled hunter, the companion to a disabled hunter shall possess a written statement of designation from the disabled hunter as their companion, signed by the disabled hunter including the disabled hunter's name, address, hunting license number, big game tag number, and the dates of designation as a companion. If a companion to a disabled hunter transports a big game animal on behalf of a disabled hunter, a proxy statement is required per Subsection 320.02. (7-16-12)T

**07. Companion's Possession Limit.** Big game animals killed, tagged, or retrieved by a designated companion on behalf of a disabled hunter do not count against the companion's possession limit. (7-16-12)T

**08. Disabled Hunter Considered for Violation.** The disabled hunter in possession of the valid tag shall be considered the hunter for violation of Section 351, waste of game meat. (7-16-12)T

~~2012~~ -- 249. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS).**

**260. TAGS FOR CONTROLLED HUNTS.**

**01. Use of Controlled Hunt Tags.** No person may hunt in any controlled hunt without having a valid controlled hunt tag in possession. (4-7-11)

**a.** A controlled hunt area with an “X” suffix is an extra tag hunt. (10-26-94)

**b.** In the event a tag is issued based on erroneous information, the tag will be invalidated by the Department and may NOT be used. The Department will notify the hunter of the invalidation of the tag. The person will remain on the drawn list, and if there is a waiting period in a succeeding year, the person will be required to wait the specified time period. (4-7-11)

**c.** Any person who draws a controlled hunt tag for deer is prohibited from hunting in any other deer hunt--archery, muzzleloader, or general; EXCEPT: (4-7-11)

**i.** The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first deer drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

**ii.** If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

**iii.** The holder of a deer controlled hunt tag may purchase a nonresident general season tag as a second tag and may purchase a controlled hunt extra tag for deer. (4-7-11)

**iv.** Any person who draws a controlled hunt extra tag for deer may hunt in any other deer hunt--archery, muzzleloader, general or controlled hunt. (4-7-11)

**d.** Any person who draws a controlled hunt tag for elk is prohibited from hunting in any other elk hunt--archery, muzzleloader, or general; EXCEPT: (4-7-11)

**i.** The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first elk drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

**ii.** If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

**iii.** The holder of an elk controlled hunt tag may purchase a nonresident general season tag as a second tag and may purchase a controlled hunt extra tag for elk. (4-7-11)

**iv.** Any person who draws a controlled hunt extra tag for elk may hunt in any other elk hunt--archery, muzzleloader, general or controlled hunt. (4-7-11)

**e.** Any person who draws a controlled hunt tag for pronghorn is prohibited from hunting in any other pronghorn hunt; EXCEPT: (4-7-11)

**i.** The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first pronghorn drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

**ii.** If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

iii. The holder of a pronghorn controlled hunt tag may purchase a controlled hunt extra tag for pronghorn. (4-7-11)

iv. Any person who draws a pronghorn controlled hunt extra tag may apply for a controlled hunt tag for pronghorn. (4-7-11)

f. Any person who draws a spring controlled hunt tag for black bear, may choose to purchase the controlled hunt bear tag or exchange a general season bear tag for the controlled hunt bear tag. If the hunter chooses to exchange a general season bear tag for the controlled hunt bear tag the hunter must return the unused tag to a Department office to exchange the tag for the appropriate controlled hunt tag. (4-7-11)

g. Any person who draws a fall controlled hunt tag may choose to purchase the controlled hunt bear tag or exchange a general season bear tag for the controlled hunt bear tag. If the hunter chooses to exchange a general season bear tag for the controlled hunt bear tag the hunter must return the unused tag to a Department office to exchange the tag for the appropriate controlled hunt tag; EXCEPT; the hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the fall bear drawing. (4-7-11)

h. Any resident adult person who possesses any controlled hunt tag may designate the controlled hunt tag to a resident minor child or grandchild who is qualified to participate in the hunt. (7-16-12)T

i. Rules for use of controlled hunt tags in Sections 260 and 261 apply to any resident adult person who possesses and designates a control hunt tag to a resident minor child or grandchild. Rules for eligibility in Section 260 apply to any resident adult person who possesses and designates a control hunt tag and to the designated resident minor child or grandchild. Mandatory school as provided in Section 270 shall apply to the designated resident minor child or grandchild. (7-16-12)T

ii. Designation of the controlled hunt tag shall be made on a form prescribed by the Department and may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (7-16-12)T

iii. Any resident child or grandchild cannot be designated more than one control hunt tag per species per calendar year. (7-16-12)T

iv. Designation of a controlled hunt tag shall be completed before the first opening hunt date for the tag. (7-16-12)T

i. Any nonresident adult person who possesses any controlled hunt tag may designate the controlled hunt tag to a nonresident minor child or grandchild who is qualified to participate in the hunt. (7-16-12)T

i. Rules for use of controlled hunt tags in Sections 260 and 261 apply to any resident adult person who possesses and designates a control hunt tag to a resident minor child or grandchild. Rules for eligibility in Section 260 apply to any resident adult person who possesses and designates a control hunt tag and to the designated resident minor child or grandchild. Mandatory school as provided in Section 270 shall apply to the designated resident minor child or grandchild. (7-16-12)T

ii. Designation of the controlled hunt tag shall be made on a form prescribed by the Department and may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (7-16-12)T

iii. Any nonresident child or grandchild cannot be designated more than one control hunt tag per species per calendar year. (7-16-12)T

iv. Designation of a controlled hunt tag shall be completed before the first opening hunt date for the tag. (7-16-12)T

**02. Nonresident Tag Limitations. (4-7-11)**

**a.** In controlled hunts with ten (10) or fewer tags, not more than one (1) nonresident tag will be issued. In controlled hunts, EXCEPT unlimited controlled hunts, with more than ten (10) tags, not more than ten percent (10%) of the tags will be issued to nonresidents. This rule shall be applied to each uniquely numbered controlled hunt and to the controlled hunts for each species. (4-7-11)

**b.** Outfitter allocated hunts are exempt from the limitation of Subsection 260.02.a. (3-20-04)

**c.** For each species, the total number of outfitter allocated controlled hunt tags shall be subtracted from the result of ten percent (10%) of the sum of all controlled hunt tags; including outfitter allocated controlled hunts, but excluding all unlimited controlled hunts. In addition to the limitations of Subsection 260.02.a., the resulting net number shall be the maximum number of controlled hunt tags that may be issued to nonresidents for all controlled hunts except outfitter allocated and unlimited controlled hunts. (4-7-11)

**03. Eligibility.** Any person possessing a valid Idaho hunting license is eligible to apply for controlled hunts subject to the following restrictions: (7-1-93)

**a.** Holders of a Nongame Hunting License (Type 208) may not apply for any controlled hunt. (4-6-05)

**b.** Any person whose name was drawn on a controlled hunt for either sub-species of bighorn sheep may not apply for any bighorn tag for two (2) years. Except that a person may apply for a bighorn tag in the second application period or a leftover bighorn tag the following year. Any person whose name was drawn on a controlled hunt for mountain goat may not apply for a mountain goat tag for two (2) years. Except that a person may apply for a mountain goat tag in the second application period or a leftover mountain goat tag the following year. Any person whose name was drawn on a controlled hunt for moose may not apply for a moose permit for two (2) years. Except that a person may apply for a moose tag in the second application period or a leftover moose tag the following year. Any person whose name was drawn on a controlled antlered-only deer hunt may NOT apply for any other controlled antlered-only deer hunt for one (1) year. Except that a person may apply for an antlered-only deer tag in the second application period or a leftover antlered-only deer tag the following year. Any person whose name was drawn on a controlled antlered-only elk hunt may NOT apply for any other controlled antlered-only elk hunt for one (1) year. Except that a person may apply for an antlered-only elk tag in the second application period or a leftover antlered-only elk tag the following year. The one (1) year waiting period does NOT apply to controlled hunts with an unlimited number of tags nor Landowner Appreciation Program tags. EXCEPT all successful and unsuccessful pronghorn, deer and elk hunters that comply with all Mandatory Report requirements will be eligible to be randomly drawn for one (1) of ten (10) "Super" controlled pronghorn/deer/elk tags to hunt in any open general and/or controlled pronghorn, deer or elk hunt in the following hunting season. (4-7-11)

**c.** Any person applying for a bighorn sheep, mountain goat, or moose controlled hunt may NOT apply for any other controlled hunt in the same year EXCEPT Unlimited Controlled Hunts, a controlled black bear hunt, a controlled gray wolf hunt, or a designated depredation or extra tag hunt for deer, elk or pronghorn. In addition, unsuccessful applicants for bighorn sheep, mountain goat or moose controlled hunts are eligible to participate in second application period for deer, elk, and pronghorn and the first-come, first-served deer, elk and pronghorn controlled hunt permit sales. (4-7-11)

**d.** Any person who has killed a California bighorn ram or a Rocky Mountain bighorn ram on any controlled hunt may not apply for a tag for the same subspecies, EXCEPT any person who has killed a California bighorn ram south of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a Rocky Mountain bighorn ram tag for any hunt north of Interstate Highway 84. Any person who has killed a Rocky Mountain bighorn ram north of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a California bighorn ram tag for any hunt south of Interstate Highway 84. Auction tag and lottery tag winners are exempt from the once-in-a-lifetime restrictions on killing bighorn sheep of either subspecies. (4-7-11)

**e.** No person applying for a Rocky Mountain bighorn sheep controlled hunt as a first choice shall apply for a California bighorn sheep controlled hunt as a second choice. No person applying for a California bighorn sheep controlled hunt as a first choice shall apply for a Rocky Mountain bighorn sheep controlled hunt as a second choice. No person shall apply for both a Rocky Mountain and a California bighorn the same year. (7-1-93)

**f.** Any person who kills a bighorn ewe may not apply for another bighorn ewe controlled hunt tag for five (5) years. The harvest of a bighorn ewe does not make the hunter ineligible to apply for a tag to take a California bighorn ram or a Rocky Mountain bighorn ram. Any person who applies for a bighorn ewe may not apply for any bighorn ram the same year. (4-7-11)

**g.** Any person who has killed a mountain goat since 1977 may not apply for a mountain goat tag. (4-7-11)

**h.** Any person who has killed an antlered moose in Idaho may not apply for a moose tag for antlered moose, and any person who has killed an antlerless moose in Idaho may not apply for a tag for antlerless moose EXCEPT that any person may apply for tags remaining unfilled after the controlled hunt draw. (4-7-11)

**i.** Any person applying for a landowner permission hunt must have a signed permission slip from a landowner who owns more than one hundred fifty-nine (159) acres in the hunt area. The permission slip must have the landowner's name and address on it along with the landowner's signature. (7-1-98)

**j.** Any person may apply for both a controlled hunt tag and a controlled hunt extra tag. (4-7-11)

**k.** Nonresident hound hunters applying for controlled black bear hunts must first obtain a Hound Hunter Permit pursuant to IDAPA 13.01.15.200.04, "Rules Governing the Use of Dogs." (7-1-99)

**l.** Any person applying for an outfitter allocated controlled hunt must have a written agreement with the outfitter before submitting the controlled hunt application. (4-11-06)

**m.** The Commission establishes youth only controlled hunts by proclamation. Only hunters twelve (12) to seventeen (17) years of age with a valid license may apply for youth only controlled hunts, EXCEPT hunters sixty-five (65) years of age or older or hunters with a senior combination hunting license or a disabled combination hunting license may apply for first-come, first-served leftover youth only controlled hunt permits. (5-8-09)

**04. Applications.** Individual applications or group applications for controlled hunts may be submitted electronically through the automated licensing system at any vendor location, through the Internet, over the telephone, or by mail to the Headquarters Office of the Idaho Department of Fish and Game or any Idaho Fish and Game Regional Office and shall be submitted with a postmarked not later than the annual dates shown below. Any individual application or group application which is unreadable, has incomplete or incorrect hunt or license numbers, or which lacks the required information or fee will be declared void and will not be entered in the drawing. All applications will be considered final; EXCEPT: applicants who would like to change their submitted controlled hunt application may request the original application be cancelled to resubmit a new controlled hunt application during the applicable application period. The new application is subject to the appropriate application fees. (4-7-11)

**a.** Spring black bear - Application period - January 15 - February 15. (4-6-05)

**b.** Moose, bighorn sheep, and mountain goat - Application period for first drawing - April 1 - 30. (4-6-05)

**c.** Deer, elk, pronghorn, fall black bear, and gray wolves - Application period for first drawing - May 1 - June 5. (4-7-11)

**d.** Moose, bighorn sheep, and mountain goat - Application period for second drawing, if applicable - June 15 - 25. (4-6-05)

**e.** Deer, elk, pronghorn, fall black bear, and gray wolves - Application period for second drawing - August 5 - 15. (4-7-11)

**05. Applicant Requirements.** Applicants must comply with the following requirements: (7-1-93)

**a.** Only one (1) application, per person or group, will be accepted for the same species, EXCEPT a person or group may submit one additional application for a controlled hunt extra tag for the same species. Additional

applications for the same person or group for the same species will result in all applicants being declared ineligible. (4-7-11)

**b.** Only one (1) controlled hunt extra tag will be issued for each person on any application submitted. (4-7-11)

**c.** Several applications may be submitted in a single envelope so long as each application is for a single species, a single applicant or group, and both hunts on an application must be controlled hunt tag hunts or controlled hunt extra tag hunts. (4-7-11)

**d.** Fees must be submitted with each application. A single payment (either cashier's check, money order, certified check, or a personal check) may be submitted to cover fees for all applications in the same envelope. If a check or money order is insufficient to cover the fees, all applications will be voided and returned. The application fee is set by Section 36-416, Idaho Code, per person per hunt, for deer, elk, pronghorn, moose, bighorn sheep, mountain goat, black bear, and gray wolf, applied for and is NOT refundable. The tag fees are not to be submitted with either the telephone or mail-in-application for deer, elk, pronghorn, black bear, or gray wolf. Persons applying for moose, bighorn sheep, or mountain goat controlled hunts must submit the tag fee and application fee with their application. Applicants successful in drawing for a moose, bighorn sheep, or mountain goat will receive a tag in the mail. (4-7-11)

**e.** Any controlled hunt tags, EXCEPT unlimited controlled hunts that remain unsold after the controlled hunt drawings may be sold by any Point-of-Sale vendor, through the Internet, or over the telephone on a first-come, first-served basis on the dates below UNLESS such day is a Sunday or legal holiday, in which case the permits will go on sale the next legal business day. A controlled hunt application and tag will be issued to successful controlled hunt purchasers. The ten percent (10%) nonresident limitation shall not apply. Applicants with a tag already in possession must return their tag to a Department office to be exchanged for the appropriate controlled hunt tag. (4-7-11)

**i.** Spring Turkey and Spring Bear - April 1. (4-7-11)

**ii.** Moose, Bighorn Sheep and Mountain Goat - July 10. (4-7-11)

**iii.** Deer, Elk, Pronghorn and Fall Bear - August 25. (4-7-11)

**f.** A "group application" for deer, elk, and pronghorn is defined as two, three, or four (2, 3, or 4) hunters applying for the same controlled hunt on the same application. All hunters must comply with all rules and complete applications properly. All applicants must abide by the same first and second hunt choices. (4-7-11)

**g.** A "group application" for moose, bighorn sheep, mountain goat, black bear, and gray wolf, is defined as two (2) hunters applying for the same controlled hunt on the same application. Both hunters must comply with all rules and complete applications properly. Both applicants must abide by the same first and second hunt choices. (3-29-10)

**h.** If a group application exceeds the number of tags available in a hunt that group application will not be selected for that hunt. (4-7-11)

**i.** Landowner permission hunt tags will be sold first-come, first-served basis at the Headquarters or regional offices of the Idaho Department of Fish and Game after July 15. (4-7-11)

**06. Refunds of Controlled Hunt Fees.** (7-1-93)

**a.** Controlled hunt tag fees will be refunded to the unsuccessful or ineligible applicants for moose, sheep, and mountain goat. Unsuccessful applicants may donate all or a portion of their tag fee for moose, bighorn sheep, and mountain goat to Citizens Against Poaching by checking the appropriate box on the application. One dollar (\$1) of the non-refundable application fee will go to Citizens Against Poaching unless the applicant instructs otherwise. (3-20-97)

- b.** Fees for hunting licenses will NOT be refunded to unsuccessful or ineligible applicants. (10-26-94)
  - c.** Fees for deer or elk tags purchased prior to the drawing will NOT be refunded to unsuccessful or ineligible applicants. (10-26-94)
  - d.** Overpayment of fees of more than five dollars (\$5) will be refunded. Overpayment of five dollars (\$5) or less will NOT be refunded and will be retained by the Department. (7-1-93)
  - e.** Application fees are nonrefundable. (4-7-11)
  - f.** Fees for resident and nonresident adult control hunt tags that are subsequently designated to a minor child or grandchild are not refundable. (7-16-12)T
- 07. Controlled Hunt Drawing.** Single or group applications which are not drawn for the first choice hunt will automatically be entered into a second choice drawing, provided the second choice hunt applied for has not been filled. (7-1-93)
- 08. Unclaimed Tags.** Successful applicants for the first deer, elk, black bear, gray wolf, or pronghorn controlled hunt drawing must purchase and pick up their controlled hunt tag by August 1. All controlled hunt tags not purchased and picked up will be entered into a second controlled hunt drawing. Any controlled hunt tags left over or unclaimed after the second controlled hunt drawing will be sold on a first-come, first-served basis. (4-7-11)
- 09. Second Drawing Exclusion.** The Director may designate certain leftover controlled hunt tags to become immediately available on a first-come, first-served over-the-counter basis due to the dates of the hunt. (3-29-10)



## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.08 - RULES GOVERNING THE TAKING OF BIG GAME ANIMALS IN THE STATE OF IDAHO

DOCKET NO. 13-0108-1203

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is August 27, 2012.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b)(2) and 36-408(9), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 24, 2012.

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:

Rules are needed to govern use of new Governor's Wildlife Partnership Tags (auction controlled hunt tags) to describe control hunt use, eligibility, and other limitations.

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

The temporary rule complies with a statutory amendment (2012 Senate Bill 1256) and confers a benefit to certain hunters.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these rules implement a statutory amendment, and there are no identifiable representatives or interests affected by the eligibility and controlled hunt tag use rules.

**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

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule and how an electronic copy can be obtained or, if otherwise unavailable, where copyrighted or other proprietary materials may be obtained: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game

600 S. Walnut  
P.O. Box 25, Boise, Idaho 83707  
(208) 334-3715, Fax (208) 334-2148

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 13-0108-1203**

**260. TAGS FOR CONTROLLED HUNTS.**

**01. Use of Controlled Hunt Tags.** No person may hunt in any controlled hunt without having a valid controlled hunt tag in possession. (4-7-11)

**a.** A controlled hunt area with an "X" suffix is an extra tag hunt. (10-26-94)

**b.** In the event a tag is issued based on erroneous information, the tag will be invalidated by the Department and may NOT be used. The Department will notify the hunter of the invalidation of the tag. The person will remain on the drawn list, and if there is a waiting period in a succeeding year, the person will be required to wait the specified time period. (4-7-11)

**c.** Any person who draws a controlled hunt tag for deer is prohibited from hunting in any other deer hunt--archery, muzzleloader, or general; EXCEPT: (4-7-11)

**i.** The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first deer drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

**ii.** If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

**iii.** The holder of a deer controlled hunt tag may purchase a nonresident general season tag as a second tag and may purchase a controlled hunt extra tag for deer. (4-7-11)

**iv.** Any person who draws a controlled hunt extra tag for deer may hunt in any other deer hunt--archery, muzzleloader, general or controlled hunt. (4-7-11)

**d.** Any person who draws a controlled hunt tag for elk is prohibited from hunting in any other elk hunt--archery, muzzleloader, or general; EXCEPT: (4-7-11)

**i.** The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first elk drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

**ii.** If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

**iii.** The holder of an elk controlled hunt tag may purchase a nonresident general season tag as a second tag and may purchase a controlled hunt extra tag for elk. (4-7-11)

**iv.** Any person who draws a controlled hunt extra tag for elk may hunt in any other elk hunt--archery, muzzleloader, general or controlled hunt. (4-7-11)

**e.** Any person who draws a controlled hunt tag for pronghorn is prohibited from hunting in any other pronghorn hunt; EXCEPT: (4-7-11)

**i.** The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first pronghorn drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

ii. If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

iii. The holder of a pronghorn controlled hunt tag may purchase a controlled hunt extra tag for pronghorn. (4-7-11)

iv. Any person who draws a pronghorn controlled hunt extra tag may apply for a controlled hunt tag for pronghorn. (4-7-11)

f. Any person who draws a spring controlled hunt tag for black bear, may choose to purchase the controlled hunt bear tag or exchange a general season bear tag for the controlled hunt bear tag. If the hunter chooses to exchange a general season bear tag for the controlled hunt bear tag the hunter must return the unused tag to a Department office to exchange the tag for the appropriate controlled hunt tag. (4-7-11)

g. Any person who draws a fall controlled hunt tag may choose to purchase the controlled hunt bear tag or exchange a general season bear tag for the controlled hunt bear tag. If the hunter chooses to exchange a general season bear tag for the controlled hunt bear tag the hunter must return the unused tag to a Department office to exchange the tag for the appropriate controlled hunt tag; EXCEPT; the hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the fall bear drawing. (4-7-11)

**02. Nonresident Tag Limitations.** (4-7-11)

a. In controlled hunts with ten (10) or fewer tags, not more than one (1) nonresident tag will be issued. In controlled hunts, EXCEPT unlimited controlled hunts, with more than ten (10) tags, not more than ten percent (10%) of the tags will be issued to nonresidents. This rule shall be applied to each uniquely numbered controlled hunt and to the controlled hunts for each species. (4-7-11)

b. Outfitter allocated hunts are exempt from the limitation of Subsection 260.02.a. (3-20-04)

c. For each species, the total number of outfitter allocated controlled hunt tags shall be subtracted from the result of ten percent (10%) of the sum of all controlled hunt tags; including outfitter allocated controlled hunts, but excluding all unlimited controlled hunts. In addition to the limitations of Subsection 260.02.a., the resulting net number shall be the maximum number of controlled hunt tags that may be issued to nonresidents for all controlled hunts except outfitter allocated and unlimited controlled hunts. (4-7-11)

d. Governor's Wildlife Partnership Tags for deer, elk, pronghorn, bighorn sheep, mountain goat, and moose shall be taken from the nonresident tag quota and availability is subject to Nonresident Tag Limitations. (8-27-12)T

**03. Eligibility.** Any person possessing a valid Idaho hunting license is eligible to apply for controlled hunts subject to the following restrictions: (7-1-93)

a. Holders of a Nongame Hunting License (Type 208) may not apply for any controlled hunt.(4-6-05)

b. Any person whose name was drawn on a controlled hunt for either sub-species of bighorn sheep may not apply for any bighorn tag for two (2) years. Except that a person may apply for a bighorn tag in the second application period or a leftover bighorn tag the following year. Any person whose name was drawn on a controlled hunt for mountain goat may not apply for a mountain goat tag for two (2) years. Except that a person may apply for a mountain goat tag in the second application period or a leftover mountain goat tag the following year. Any person whose name was drawn on a controlled hunt for moose may not apply for a moose permit for two (2) years. Except that a person may apply for a moose tag in the second application period or a leftover moose tag the following year. Any person whose name was drawn on a controlled antlered-only deer hunt may NOT apply for any other controlled antlered-only deer hunt for one (1) year. Except that a person may apply for an antlered-only deer tag in the second application period or a leftover antlered-only deer tag the following year. Any person whose name was drawn on a controlled antlered-only elk hunt may NOT apply for any other controlled antlered-only elk hunt for one (1) year.

Except that a person may apply for an antlered-only elk tag in the second application period or a leftover antlered-only elk tag the following year. The one (1) year waiting period does NOT apply to controlled hunts with an unlimited number of tags, ~~not~~ Landowner Appreciation Program tags, or Governor's Wildlife Partnership Tags. EXCEPT all successful and unsuccessful pronghorn, deer and elk hunters that comply with all Mandatory Report requirements will be eligible to be randomly drawn for one (1) of ten (10) "Super" controlled pronghorn/deer/elk tags to hunt in any open general and/or controlled pronghorn, deer or elk hunt in the following hunting season.

~~(4-7-11)~~(8-27-12)T

**c.** Any person applying for a bighorn sheep, mountain goat, or moose controlled hunt may NOT apply for any other controlled hunt in the same year EXCEPT Unlimited Controlled Hunts, a controlled black bear hunt, a controlled gray wolf hunt, or a designated depredation or extra tag hunt for deer, elk or pronghorn. In addition, unsuccessful applicants for bighorn sheep, mountain goat or moose controlled hunts are eligible to participate in second application period for deer, elk, and pronghorn and the first-come, first-served deer, elk and pronghorn controlled hunt permit sales. (4-7-11)

**d.** Any person who has killed a California bighorn ram or a Rocky Mountain bighorn ram on any controlled hunt may not apply for a tag for the same subspecies, EXCEPT any person who has killed a California bighorn ram south of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a Rocky Mountain bighorn ram tag for any hunt north of Interstate Highway 84. Any person who has killed a Rocky Mountain bighorn ram north of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a California bighorn ram tag for any hunt south of Interstate Highway 84. Bighorn sheep Auction tag recipients under IDAPA 13.01.08.700 and lottery tag winners recipients under IDAPA 13.01.08.800 are exempt from the once-in-a-lifetime restrictions on killing bighorn sheep of either subspecies. ~~(4-7-11)~~(8-27-12)T

**e.** No person applying for a Rocky Mountain bighorn sheep controlled hunt as a first choice shall apply for a California bighorn sheep controlled hunt as a second choice. No person applying for a California bighorn sheep controlled hunt as a first choice shall apply for a Rocky Mountain bighorn sheep controlled hunt as a second choice. No person shall apply for both a Rocky Mountain and a California bighorn the same year. (7-1-93)

**f.** Any person who kills a bighorn ewe may not apply for another bighorn ewe controlled hunt tag for five (5) years. The harvest of a bighorn ewe does not make the hunter ineligible to apply for a tag to take a California bighorn ram or a Rocky Mountain bighorn ram. Any person who applies for a bighorn ewe may not apply for any bighorn ram the same year. (4-7-11)

**g.** Any person who has killed a mountain goat since 1977 may not apply for a mountain goat tag. (4-7-11)

**h.** Any person who has killed an antlered moose in Idaho may not apply for a moose tag for antlered moose, and any person who has killed an antlerless moose in Idaho may not apply for a tag for antlerless moose EXCEPT that any person may apply for tags remaining unfilled after the controlled hunt draw. (4-7-11)

**i.** Any person applying for a landowner permission hunt must have a signed permission slip from a landowner who owns more than one hundred fifty-nine (159) acres in the hunt area. The permission slip must have the landowner's name and address on it along with the landowner's signature. (7-1-98)

**j.** Any person may apply for both a controlled hunt tag and a controlled hunt extra tag. (4-7-11)

**k.** Nonresident hound hunters applying for controlled black bear hunts must first obtain a Hound Hunter Permit pursuant to IDAPA 13.01.15.200.04, "Rules Governing the Use of Dogs." (7-1-99)

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- a.** Spring black bear - Application period - January 15 - February 15. (4-6-05)
- b.** Moose, bighorn sheep, and mountain goat - Application period for first drawing - April 1 - 30. (4-6-05)
- c.** Deer, elk, pronghorn, fall black bear, and gray wolves - Application period for first drawing - May 1 - June 5. (4-7-11)
- d.** Moose, bighorn sheep, and mountain goat - Application period for second drawing, if applicable - June 15 - 25. (4-6-05)
- e.** Deer, elk, pronghorn, fall black bear, and gray wolves - Application period for second drawing - August 5 - 15. (4-7-11)

**05. Applicant Requirements.** Applicants must comply with the following requirements: (7-1-93)

- a.** Only one (1) application, per person or group, will be accepted for the same species, EXCEPT a person or group may submit one additional application for a controlled hunt extra tag for the same species. Additional applications for the same person or group for the same species will result in all applicants being declared ineligible. (4-7-11)
- b.** Only one (1) controlled hunt extra tag will be issued for each person on any application submitted. (4-7-11)
- c.** Several applications may be submitted in a single envelope so long as each application is for a single species, a single applicant or group, and both hunts on an application must be controlled hunt tag hunts or controlled hunt extra tag hunts. (4-7-11)
- d.** Fees must be submitted with each application. A single payment (either cashier's check, money order, certified check, or a personal check) may be submitted to cover fees for all applications in the same envelope. If a check or money order is insufficient to cover the fees, all applications will be voided and returned. The application fee is set by Section 36-416, Idaho Code, per person per hunt, for deer, elk, pronghorn, moose, bighorn sheep, mountain goat, black bear, and gray wolf, applied for and is NOT refundable. The tag fees are not to be submitted with either the telephone or mail-in-application for deer, elk, pronghorn, black bear, or gray wolf. Persons applying for moose, bighorn sheep, or mountain goat controlled hunts must submit the tag fee and application fee with their application. Applicants successful in drawing for a moose, bighorn sheep, or mountain goat will receive a tag in the mail. (4-7-11)
- e.** Any controlled hunt tags, EXCEPT unlimited controlled hunts that remain unsold after the controlled hunt drawings may be sold by any Point-of-Sale vendor, through the Internet, or over the telephone on a first-come, first-served basis on the dates below UNLESS such day is a Sunday or legal holiday, in which case the permits will go on sale the next legal business day. A controlled hunt application and tag will be issued to successful controlled hunt purchasers. The ten percent (10%) nonresident limitation shall not apply. Applicants with a tag already in possession must return their tag to a Department office to be exchanged for the appropriate controlled hunt tag. (4-7-11)

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- f.** A “group application” for deer, elk, and pronghorn is defined as two, three, or four (2, 3, or 4) hunters applying for the same controlled hunt on the same application. All hunters must comply with all rules and complete applications properly. All applicants must abide by the same first and second hunt choices. (4-7-11)
- g.** A “group application” for moose, bighorn sheep, mountain goat, black bear, and gray wolf, is defined as two (2) hunters applying for the same controlled hunt on the same application. Both hunters must comply with all rules and complete applications properly. Both applicants must abide by the same first and second hunt choices. (3-29-10)
- h.** If a group application exceeds the number of tags available in a hunt that group application will not be selected for that hunt. (4-7-11)
- i.** Landowner permission hunt tags will be sold first-come, first-served basis at the Headquarters or regional offices of the Idaho Department of Fish and Game after July 15. (4-7-11)
- 06. Refunds of Controlled Hunt Fees.** (7-1-93)
  - a.** Controlled hunt tag fees will be refunded to the unsuccessful or ineligible applicants for moose, sheep, and mountain goat. Unsuccessful applicants may donate all or a portion of their tag fee for moose, bighorn sheep, and mountain goat to Citizens Against Poaching by checking the appropriate box on the application. One dollar (\$1) of the non-refundable application fee will go to Citizens Against Poaching unless the applicant instructs otherwise. (3-20-97)
  - b.** Fees for hunting licenses will NOT be refunded to unsuccessful or ineligible applicants. (10-26-94)
  - c.** Fees for deer or elk tags purchased prior to the drawing will NOT be refunded to unsuccessful or ineligible applicants. (10-26-94)
  - d.** Overpayment of fees of more than five dollars (\$5) will be refunded. Overpayment of five dollars (\$5) or less will NOT be refunded and will be retained by the Department. (7-1-93)
  - e.** Application fees are nonrefundable. (4-7-11)
- 07. Controlled Hunt Drawing.** Single or group applications which are not drawn for the first choice hunt will automatically be entered into a second choice drawing, provided the second choice hunt applied for has not been filled. (7-1-93)
- 08. Unclaimed Tags.** Successful applicants for the first deer, elk, black bear, gray wolf, or pronghorn controlled hunt drawing must purchase and pick up their controlled hunt tag by August 1. All controlled hunt tags not purchased and picked up will be entered into a second controlled hunt drawing. Any controlled hunt tags left over or unclaimed after the second controlled hunt drawing will be sold on a first-come, first-served basis. (4-7-11)
- 09. Second Drawing Exclusion.** The Director may designate certain leftover controlled hunt tags to become immediately available on a first-come, first-served over-the-counter basis due to the dates of the hunt. (3-29-10)

## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.08 - RULES GOVERNING THE TAKING OF BIG GAME ANIMALS IN THE STATE OF IDAHO

DOCKET NO. 13-0108-1204

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 36-104(b) and 36-1101, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 24, 2012.

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 proposed rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Amendments to improve clarity and outreach to help both hunters and other motorized recreationalists understand the Motorized Hunting Rule. Definitions are clarified, and the rule provides for unit application rather than hunt designation.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), negotiated rulemaking was not conducted because the Motorized Hunting Rule is controversial. Hunters who use an ATV are unlikely to reach a consensus with hunters opposed to ATVs.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule and how an electronic copy can be obtained or, if otherwise unavailable, where copyrighted or other proprietary materials may be obtained: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut  
P.O. Box 25, Boise, Idaho 83707  
(208) 334-3715  
Fax (208) 334-2148

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0108-1204

411. **MOTORIZED ~~VEHICLE USE RESTRICTIONS~~ HUNTING RULE.**

The use of motorized vehicles by hunters as an aid to hunting big game is restricted in certain areas. This use restriction is in addition to all federal, state and local laws, rules, regulations, ordinances and orders; including, but not limited to, any motorized vehicle licensing, registration, and permitting requirements and traffic laws. Hunters must comply with all motorized vehicle limits or prohibitions instituted by the landowner or land manager. Also, this use restriction rule is not an exception from, and is in addition to, the statutory prohibition against hunting from or by the use of any motorized vehicle set forth in Section 36-1101(b)(1), Idaho Code. (4-6-05)

**01. Use Restriction.** In designated ~~areas and hunts~~ units from August 30 through December 31, hunters may only use motorized vehicles on established roadways which are open to motorized traffic and capable of being traveled by full-sized automobiles. ~~Any other use by hunters is prohibited. All off road use by hunters is prohibited.~~ (4-6-05)( )

**02. Exceptions.** This use restriction rule shall not apply to the following permissible motorized vehicle uses by hunters off of an established roadway: (4-6-05)( )

**a.** Holders of a valid Handicapped Persons Motor Vehicle Hunting Permit may use a motorized vehicle as allowed by the land owner or manager. (4-6-05)

**b.** Hunters may use a motorized vehicle to retrieve downed game if such travel is allowed by the land owner or manager. (4-6-05)

**c.** Hunters may use a motorized vehicle to pack camping equipment in or out if such travel is allowed by the land owner or manager; however, hunters shall not hunt while packing camping equipment. (4-6-05)

**d.** Private landowners on their private land, their authorized agents, and persons with written landowner permission ~~may use a motorized vehicle on their private land; however, they may not hunt from or by the use of any motorized vehicle as prohibited by Section 36-1101(b)(1), Idaho Code~~ are excepted from the Motorized Hunting Rule use restriction. (4-6-05)( )

~~**03. Restricted Areas and Hunts.** This motorized vehicle use restriction shall apply to identified areas and hunts in all Big Game Management Units. The hunts and areas with a motorized vehicle use restriction are identified in the Commission's Big Game Season Proclamation, which is published in a brochure available at department offices and license vendors.~~ (4-6-05)

~~**043. Defined Terms.**~~ (4-6-05)

~~**a.** A motorized vehicle shall be defined as any water, land, or air vehicle propelled by means of steam, petroleum products, electricity, or any other mechanical power as set forth in Section 36-202, Idaho Code.~~ ( )

~~**a**b.~~ A full-sized automobile shall be defined as any motorized vehicle with a gross weight in excess of one thousand five hundred (1,500) pounds. (4-6-05)

~~**b**c.~~ An established roadway shall be defined as any road that is established, built, maintained, approved or designated by any governmental entity or private landowner for the purpose of travel by full-sized automobiles. An established roadway shows evidence of repeated use by full-sized automobiles, and may include a traveled way of natural earth with depressed wheel tracks and little or no vegetation in the wheel tracks. (4-6-05)

~~**d**.~~ A hunter shall be defined as a person engaged in the activity of hunting chasing, driving, flushing, attracting, pursuing, worrying, following after or on the trail of, shooting at, stalking, or lying in wait for, any wildlife whether or not such wildlife is then or subsequently captured, killed, taken, or wounded as defined set forth in Section 36-202(j), Idaho Code. (4-6-05)( )



412. **DESIGNATED** MOTORIZED ~~VEHICLE USE RESTRICTION~~ **HUNTING RULE** UNITS.

The motorized ~~vehicle~~ **hunting** use restriction applies to ~~areas and hunts in~~ units 29, 30, 30A, 32, 32A, 36A, 37, 37A, ~~39,~~ 45, 47, 49, 50, 51, 52, ~~52A~~ 53, 56, 58, 59, 59A, 66, 66A, 69, 70, 72 ~~(late season),~~ 73, 75, 76, 77, and 78. ~~The specific hunts and areas with a motorized vehicle use restriction are identified in the Commission's Big Game Season Proclamation, which is published in a brochure available at department offices and license vendors. (4-7-11)( )~~

## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.08 - RULES GOVERNING THE TAKING OF BIG GAME ANIMALS IN THE STATE OF IDAHO

DOCKET NO. 13-0108-1205

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 36-104(b) and 36-1101, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 24, 2012.

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 proposed rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Commission has received comments about the equitable distribution of Landowner Appreciation Tags. This proposed rule make the following change: implement a one year waiting period for antlered deer and elk LAP hunts oversubscribed by a ratio of 2:1 or greater.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), negotiated rulemaking was not conducted because the Landowner Appreciation Program and the distribution of LAP tags are controversial. Landowners, hunters and sporting groups are unlikely to reach a consensus.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule and how an electronic copy can be obtained or, if otherwise unavailable, where copyrighted or other proprietary materials may be obtained: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut  
P.O. Box 25, Boise, Idaho 83707  
(208) 334-3715  
Fax (208) 334-2148

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0108-1205**

**260. TAGS FOR CONTROLLED HUNTS.**

**01. Use of Controlled Hunt Tags.** No person may hunt in any controlled hunt without having a valid controlled hunt tag in possession. (4-7-11)

**a.** A controlled hunt area with an "X" suffix is an extra tag hunt. (10-26-94)

**b.** In the event a tag is issued based on erroneous information, the tag will be invalidated by the Department and may NOT be used. The Department will notify the hunter of the invalidation of the tag. The person will remain on the drawn list, and if there is a waiting period in a succeeding year, the person will be required to wait the specified time period. (4-7-11)

**c.** Any person who draws a controlled hunt tag for deer is prohibited from hunting in any other deer hunt--archery, muzzleloader, or general; EXCEPT: (4-7-11)

**i.** The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first deer drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

**ii.** If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

**iii.** The holder of a deer controlled hunt tag may purchase a nonresident general season tag as a second tag and may purchase a controlled hunt extra tag for deer. (4-7-11)

**iv.** Any person who draws a controlled hunt extra tag for deer may hunt in any other deer hunt--archery, muzzleloader, general or controlled hunt. (4-7-11)

**d.** Any person who draws a controlled hunt tag for elk is prohibited from hunting in any other elk hunt--archery, muzzleloader, or general; EXCEPT: (4-7-11)

**i.** The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first elk drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

**ii.** If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

**iii.** The holder of an elk controlled hunt tag may purchase a nonresident general season tag as a second tag and may purchase a controlled hunt extra tag for elk. (4-7-11)

**iv.** Any person who draws a controlled hunt extra tag for elk may hunt in any other elk hunt--archery, muzzleloader, general or controlled hunt. (4-7-11)

**e.** Any person who draws a controlled hunt tag for pronghorn is prohibited from hunting in any other pronghorn hunt; EXCEPT: (4-7-11)

**i.** The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first pronghorn drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

ii. If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

iii. The holder of a pronghorn controlled hunt tag may purchase a controlled hunt extra tag for pronghorn. (4-7-11)

iv. Any person who draws a pronghorn controlled hunt extra tag may apply for a controlled hunt tag for pronghorn. (4-7-11)

f. Any person who draws a spring controlled hunt tag for black bear, may choose to purchase the controlled hunt bear tag or exchange a general season bear tag for the controlled hunt bear tag. If the hunter chooses to exchange a general season bear tag for the controlled hunt bear tag the hunter must return the unused tag to a Department office to exchange the tag for the appropriate controlled hunt tag. (4-7-11)

g. Any person who draws a fall controlled hunt tag may choose to purchase the controlled hunt bear tag or exchange a general season bear tag for the controlled hunt bear tag. If the hunter chooses to exchange a general season bear tag for the controlled hunt bear tag the hunter must return the unused tag to a Department office to exchange the tag for the appropriate controlled hunt tag; EXCEPT; the hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the fall bear drawing. (4-7-11)

**02. Nonresident Tag Limitations.** (4-7-11)

a. In controlled hunts with ten (10) or fewer tags, not more than one (1) nonresident tag will be issued. In controlled hunts, EXCEPT unlimited controlled hunts, with more than ten (10) tags, not more than ten percent (10%) of the tags will be issued to nonresidents. This rule shall be applied to each uniquely numbered controlled hunt and to the controlled hunts for each species. (4-7-11)

b. Outfitter allocated hunts are exempt from the limitation of Subsection 260.02.a. (3-20-04)

c. For each species, the total number of outfitter allocated controlled hunt tags shall be subtracted from the result of ten percent (10%) of the sum of all controlled hunt tags; including outfitter allocated controlled hunts, but excluding all unlimited controlled hunts. In addition to the limitations of Subsection 260.02.a., the resulting net number shall be the maximum number of controlled hunt tags that may be issued to nonresidents for all controlled hunts except outfitter allocated and unlimited controlled hunts. (4-7-11)

**03. Eligibility.** Any person possessing a valid Idaho hunting license is eligible to apply for controlled hunts subject to the following restrictions: (7-1-93)

a. Holders of a Nongame Hunting License (Type 208) may not apply for any controlled hunt.(4-6-05)

b. Any person whose name was drawn on a controlled hunt for either sub-species of bighorn sheep may not apply for any bighorn tag for two (2) years. Except that a person may apply for a bighorn tag in the second application period or a leftover bighorn tag the following year. Any person whose name was drawn on a controlled hunt for mountain goat may not apply for a mountain goat tag for two (2) years. Except that a person may apply for a mountain goat tag in the second application period or a leftover mountain goat tag the following year. Any person whose name was drawn on a controlled hunt for moose may not apply for a moose permit for two (2) years. Except that a person may apply for a moose tag in the second application period or a leftover moose tag the following year. Any person whose name was drawn on a controlled antlered-only deer hunt may NOT apply for any other controlled antlered-only deer hunt for one (1) year. Except that a person may apply for an antlered-only deer tag in the second application period or a leftover antlered-only deer tag the following year. Any person whose name was drawn on a controlled antlered-only elk hunt may NOT apply for any other controlled antlered-only elk hunt for one (1) year. Except that a person may apply for an antlered-only elk tag in the second application period or a leftover antlered-only elk tag the following year. The one (1) year waiting period does NOT apply to controlled hunts with an unlimited number of tags, ~~nor~~ Landowner Appreciation Program ~~tags~~ hunts where the number of eligible landowners is less than twice the available tags, or left-over Landowner Appreciation Program tags. EXCEPT all successful and unsuccessful pronghorn, deer and elk hunters that comply with all Mandatory Report requirements will be eligible to

be randomly drawn for one (1) of ten (10) "Super" controlled pronghorn/deer/elk tags to hunt in any open general and/or controlled pronghorn, deer or elk hunt in the following hunting season. (4-7-11)( )

**c.** Any person applying for a bighorn sheep, mountain goat, or moose controlled hunt may NOT apply for any other controlled hunt in the same year EXCEPT Unlimited Controlled Hunts, a controlled black bear hunt, a controlled gray wolf hunt, or a designated depredation or extra tag hunt for deer, elk or pronghorn. In addition, unsuccessful applicants for bighorn sheep, mountain goat or moose controlled hunts are eligible to participate in second application period for deer, elk, and pronghorn and the first-come, first-served deer, elk and pronghorn controlled hunt permit sales. (4-7-11)

**d.** Any person who has killed a California bighorn ram or a Rocky Mountain bighorn ram on any controlled hunt may not apply for a tag for the same subspecies, EXCEPT any person who has killed a California bighorn ram south of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a Rocky Mountain bighorn ram tag for any hunt north of Interstate Highway 84. Any person who has killed a Rocky Mountain bighorn ram north of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a California bighorn ram tag for any hunt south of Interstate Highway 84. Auction tag and lottery tag winners are exempt from the once-in-a-lifetime restrictions on killing bighorn sheep of either subspecies. (4-7-11)

**e.** No person applying for a Rocky Mountain bighorn sheep controlled hunt as a first choice shall apply for a California bighorn sheep controlled hunt as a second choice. No person applying for a California bighorn sheep controlled hunt as a first choice shall apply for a Rocky Mountain bighorn sheep controlled hunt as a second choice. No person shall apply for both a Rocky Mountain and a California bighorn the same year. (7-1-93)

**f.** Any person who kills a bighorn ewe may not apply for another bighorn ewe controlled hunt tag for five (5) years. The harvest of a bighorn ewe does not make the hunter ineligible to apply for a tag to take a California bighorn ram or a Rocky Mountain bighorn ram. Any person who applies for a bighorn ewe may not apply for any bighorn ram the same year. (4-7-11)

**g.** Any person who has killed a mountain goat since 1977 may not apply for a mountain goat tag. (4-7-11)

**h.** Any person who has killed an antlered moose in Idaho may not apply for a moose tag for antlered moose, and any person who has killed an antlerless moose in Idaho may not apply for a tag for antlerless moose EXCEPT that any person may apply for tags remaining unfilled after the controlled hunt draw. (4-7-11)

**i.** Any person applying for a landowner permission hunt must have a signed permission slip from a landowner who owns more than one hundred fifty-nine (159) acres in the hunt area. The permission slip must have the landowner's name and address on it along with the landowner's signature. (7-1-98)

**j.** Any person may apply for both a controlled hunt tag and a controlled hunt extra tag. (4-7-11)

**k.** Nonresident hound hunters applying for controlled black bear hunts must first obtain a Hound Hunter Permit pursuant to IDAPA 13.01.15.200.04, "Rules Governing the Use of Dogs." (7-1-99)

**l.** Any person applying for an outfitter allocated controlled hunt must have a written agreement with the outfitter before submitting the controlled hunt application. (4-11-06)

**m.** The Commission establishes youth only controlled hunts by proclamation. Only hunters twelve (12) to seventeen (17) years of age with a valid license may apply for youth only controlled hunts, EXCEPT hunters sixty-five (65) years of age or older or hunters with a senior combination hunting license or a disabled combination hunting license may apply for first-come, first-served leftover youth only controlled hunt permits. (5-8-09)

**04. Applications.** Individual applications or group applications for controlled hunts may be submitted electronically through the automated licensing system at any vendor location, through the Internet, over the telephone, or by mail to the Headquarters Office of the Idaho Department of Fish and Game or any Idaho Fish and Game Regional Office and shall be submitted with a postmarked not later than the annual dates shown below. Any individual application or group application which is unreadable, has incomplete or incorrect hunt or license numbers,

or which lacks the required information or fee will be declared void and will not be entered in the drawing. All applications will be considered final; EXCEPT: applicants who would like to change their submitted controlled hunt application may request the original application be cancelled to resubmit a new controlled hunt application during the applicable application period. The new application is subject to the appropriate application fees. (4-7-11)

- a. Spring black bear - Application period - January 15 - February 15. (4-6-05)
- b. Moose, bighorn sheep, and mountain goat - Application period for first drawing - April 1 - 30. (4-6-05)
- c. Deer, elk, pronghorn, fall black bear, and gray wolves - Application period for first drawing - May 1 - June 5. (4-7-11)
- d. Moose, bighorn sheep, and mountain goat - Application period for second drawing, if applicable - June 15 - 25. (4-6-05)
- e. Deer, elk, pronghorn, fall black bear, and gray wolves - Application period for second drawing - August 5 - 15. (4-7-11)

**05. Applicant Requirements.** Applicants must comply with the following requirements: (7-1-93)

a. Only one (1) application, per person or group, will be accepted for the same species, EXCEPT a person or group may submit one additional application for a controlled hunt extra tag for the same species. Additional applications for the same person or group for the same species will result in all applicants being declared ineligible. (4-7-11)

b. Only one (1) controlled hunt extra tag will be issued for each person on any application submitted. (4-7-11)

c. Several applications may be submitted in a single envelope so long as each application is for a single species, a single applicant or group, and both hunts on an application must be controlled hunt tag hunts or controlled hunt extra tag hunts. (4-7-11)

d. Fees must be submitted with each application. A single payment (either cashier's check, money order, certified check, or a personal check) may be submitted to cover fees for all applications in the same envelope. If a check or money order is insufficient to cover the fees, all applications will be voided and returned. The application fee is set by Section 36-416, Idaho Code, per person per hunt, for deer, elk, pronghorn, moose, bighorn sheep, mountain goat, black bear, and gray wolf, applied for and is NOT refundable. The tag fees are not to be submitted with either the telephone or mail-in-application for deer, elk, pronghorn, black bear, or gray wolf. Persons applying for moose, bighorn sheep, or mountain goat controlled hunts must submit the tag fee and application fee with their application. Applicants successful in drawing for a moose, bighorn sheep, or mountain goat will receive a tag in the mail. (4-7-11)

e. Any controlled hunt tags, EXCEPT unlimited controlled hunts that remain unsold after the controlled hunt drawings may be sold by any Point-of-Sale vendor, through the Internet, or over the telephone on a first-come, first-served basis on the dates below UNLESS such day is a Sunday or legal holiday, in which case the permits will go on sale the next legal business day. A controlled hunt application and tag will be issued to successful controlled hunt purchasers. The ten percent (10%) nonresident limitation shall not apply. Applicants with a tag already in possession must return their tag to a Department office to be exchanged for the appropriate controlled hunt tag. (4-7-11)

- i. Spring Turkey and Spring Bear - April 1. (4-7-11)
- ii. Moose, Bighorn Sheep and Mountain Goat - July 10. (4-7-11)
- iii. Deer, Elk, Pronghorn and Fall Bear - August 25. (4-7-11)

**f.** A “group application” for deer, elk, and pronghorn is defined as two, three, or four (2, 3, or 4) hunters applying for the same controlled hunt on the same application. All hunters must comply with all rules and complete applications properly. All applicants must abide by the same first and second hunt choices. (4-7-11)

**g.** A “group application” for moose, bighorn sheep, mountain goat, black bear, and gray wolf, is defined as two (2) hunters applying for the same controlled hunt on the same application. Both hunters must comply with all rules and complete applications properly. Both applicants must abide by the same first and second hunt choices. (3-29-10)

**h.** If a group application exceeds the number of tags available in a hunt that group application will not be selected for that hunt. (4-7-11)

**i.** Landowner permission hunt tags will be sold first-come, first-served basis at the Headquarters or regional offices of the Idaho Department of Fish and Game after July 15. (4-7-11)

**06. Refunds of Controlled Hunt Fees.** (7-1-93)

**a.** Controlled hunt tag fees will be refunded to the unsuccessful or ineligible applicants for moose, sheep, and mountain goat. Unsuccessful applicants may donate all or a portion of their tag fee for moose, bighorn sheep, and mountain goat to Citizens Against Poaching by checking the appropriate box on the application. One dollar (\$1) of the non-refundable application fee will go to Citizens Against Poaching unless the applicant instructs otherwise. (3-20-97)

**b.** Fees for hunting licenses will NOT be refunded to unsuccessful or ineligible applicants. (10-26-94)

**c.** Fees for deer or elk tags purchased prior to the drawing will NOT be refunded to unsuccessful or ineligible applicants. (10-26-94)

**d.** Overpayment of fees of more than five dollars (\$5) will be refunded. Overpayment of five dollars (\$5) or less will NOT be refunded and will be retained by the Department. (7-1-93)

**e.** Application fees are nonrefundable. (4-7-11)

**07. Controlled Hunt Drawing.** Single or group applications which are not drawn for the first choice hunt will automatically be entered into a second choice drawing, provided the second choice hunt applied for has not been filled. (7-1-93)

**08. Unclaimed Tags.** Successful applicants for the first deer, elk, black bear, gray wolf, or pronghorn controlled hunt drawing must purchase and pick up their controlled hunt tag by August 1. All controlled hunt tags not purchased and picked up will be entered into a second controlled hunt drawing. Any controlled hunt tags left over or unclaimed after the second controlled hunt drawing will be sold on a first-come, first-served basis. (4-7-11)

**09. Second Drawing Exclusion.** The Director may designate certain leftover controlled hunt tags to become immediately available on a first-come, first-served over-the-counter basis due to the dates of the hunt. (3-29-10)

## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO

#### DOCKET NO. 13-0109-1201

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is July 16, 2012.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b), 36-405(c)(2)(B), and 36-409(c), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 24, 2012.

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:

New laws (2012 House Bill 457 and House Bill 525) allow rules for controlled hunt tag designation to a minor child or grandchild, and for tag exemption for a disabled hunter companion assisting a disabled hunter with taking certain wildlife. These rules set the process for designating any controlled hunt tag to a minor child or grandchild, and exempt a disabled hunting companion from possessing a valid game tag when assisting a disabled hunter with a valid tag taking wildlife.

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

The temporary rule confers a benefit to certain hunters, and complies with amendments to governing law.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these rules implement statutory amendments. There are no identifiable representatives for the parties who may choose to participate in the designation of controlled hunt tags, disabled hunters or disabled hunter companions.

**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

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule and how an electronic copy can be obtained or, if otherwise unavailable, where copyrighted or other proprietary materials may be obtained: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.



W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut  
P.O. Box 25, Boise, Idaho 83707  
(208) 334-3715, Fax (208) 334-2148

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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 13-0109-1201**

**100. TAGS, STAMPS, PERMITS, AND VALIDATIONS.**

**01. Sage Grouse or Sharp-Tailed Grouse.** No person shall hunt sage or sharp-tailed grouse anywhere within the state, except licensed shooting preserves, without having in his or her possession the appropriate hunting license that has been validated for sage grouse and sharp-tailed grouse. The validation shall be valid from January 1 through December 31 of each year. (5-8-09)

**02. Migratory Game Birds.** No person shall hunt ducks, geese, brant, coots, Wilson's snipe, sandhill cranes, or mourning doves anywhere within the state, without having in his or her possession the appropriate hunting license that has been validated for the Federal Migratory Game Bird Harvest Information Program. The validation shall be valid from January 1 through December 31 of each year. (3-29-12)

**03. Wild Turkey.** No person shall hunt wild turkey without having in his or her possession the appropriate hunting license, tag, and controlled hunt permit. Persons obtaining and using tags, stamps, and permits must comply with the following requirements: (7-1-98)

**a.** There are three (3) turkey tags available each calendar year. These are the general tag, extra tag, and special unit tag. Only three (3) turkey tags of the following may be purchased each year; one (1) general and two (2) extra. In addition to the previously mentioned three (3) turkey tags, three (3) special unit tags may also be purchased. A hunter may use the general tag to hunt in any spring general season or use the general tag with a controlled hunt permit to hunt in a controlled hunt. (3-29-12)

**b.** Permits for Controlled Hunts: Any person who receives a controlled hunt permit for wild turkey is prohibited from using that permit to hunt in any other wild turkey controlled hunt. (3-29-12)

**c.** Nonresident permit limitations: On controlled hunts with ten (10) or fewer permits, not more than one (1) permit will be issued to nonresidents. On controlled hunts with more than ten (10) permits, not more than ten percent (10%) of the permits may be issued to nonresidents. (7-1-98)

**d.** Eligibility: The holders of valid hunting licenses are eligible to apply for controlled hunts subject to the following restrictions: (7-1-93)

**i.** Holders of a Type 208 Nongame Hunting License may not apply for any controlled hunt. (7-1-93)

**ii.** In the event a permit is issued based on erroneous information, the permit will be invalidated and the person will remain on the drawn list. (7-1-93)

**e.** Applications: Applications for spring and fall controlled hunts shall be made on a form prescribed by the Department and must be received at the Headquarters Office of the Idaho Department of Fish and Game or postmarked not later than February 15 for spring hunts and July 15 for fall hunts, annually. Applications must comply with the following requirements: (5-8-09)

- i. Holders of a Duplicate License (Type 501) must use their original license number to apply for a controlled hunt. Duplicate license numbers will not be accepted. (7-1-93)
- ii. Only one (1) application card per person or group will be accepted. Additional application cards will result in all applicants being declared ineligible. (7-1-93)
- iii. Fees: All applicants for controlled hunts must submit a non-refundable application fee with their application; one dollar (\$1) of this fee may be donated to the Citizens Against Poaching Program. (5-8-09)
- iv. A single payment (either cashier's check, money order, certified check, or personal check) may be submitted to cover fees for all applications in the same envelope. If a check or money order is insufficient to cover the fees, all applications will be voided and returned. (2-7-95)
- v. A "group application" is defined as two (2) hunters applying for the same controlled hunt on the same application. (2-7-95)
- vi. Hunting license and tag fees will NOT be refunded to unsuccessful applicants. (7-1-93)
- vii. All spring wild turkey hunters may apply for a Fall turkey controlled hunt permit during the same calendar year. (3-30-01)
- f.** Drawing information: Single or group applications which are not drawn for the first choice hunt will automatically be entered into a second choice drawing provided the second choice hunt applied for has not been filled. (7-1-93)
- g.** Tag validation and attachment: Immediately after any wild turkey is killed, the turkey tag must be validated and securely attached to the wild turkey. (7-1-93)
- h.** To validate the tag, the hunter must cut out and completely remove two (2) triangles on the border of the tag, one (1) for the month and one (1) for the day of the kill. (7-1-93)
- i.** The tag must remain attached so long as the turkey is in transit or storage. (7-1-93)
- j.** The Commission establishes youth-only controlled hunts by proclamation. Only hunters nine (9) to fifteen (15) years of age with a valid license may apply for youth-only controlled hunts, provided they are ten (10) to fifteen (15) years of age during the hunt for which they are applying, EXCEPT hunters sixty-five (65) years of age or older or hunters with a senior combination hunting license or a disabled combination hunting license may apply for first-come, first-served leftover youth-only controlled hunt permits. Hunters nine (9) years of age with a valid license may apply for regular controlled hunts provided they are ten (10) years of age during the hunt for which they are applying. (4-7-11)
- k.** Any resident adult person who possesses a controlled hunt permit may designate the controlled hunt permit to a resident minor child or grandchild who is qualified to participate in the hunt. The designated child or grandchild shall possess the appropriate tag for the hunt. (7-16-12)T
- i.** Designation of the controlled hunt permit shall be made on a form prescribed by the Department and may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (7-16-12)T
- ii.** Any resident child or grandchild cannot be designated more than one (1) control hunt permit per calendar year. (7-16-12)T
- iii.** Designation of a controlled hunt permit shall be completed before the first opening hunt date for the permit. (7-16-12)T
- l.** Any nonresident adult person who possesses a controlled hunt permit may designate the controlled hunt permit to a nonresident minor child or grandchild who is qualified to participate in the hunt. The designated

child or grandchild shall possess the appropriate tag for the hunt. (7-16-12)T

i. Designation of the controlled hunt tag shall be made on a form prescribed by the Department and may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (7-16-12)T

ii. Any resident child or grandchild cannot be designated more than one (1) control hunt permit per calendar year. (7-16-12)T

iii. Designation of a controlled hunt permit shall be completed before the first opening hunt date for the permit. (7-16-12)T

**04. Early September Canada Goose Hunts.** Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (3-29-12)

**101. TAG EXCEPTION FOR COMPANION TO DISABLED HUNTER.**

**01. Assistance of Disabled Hunter by Designated Companion.** Any disabled hunter possessing a valid disabled combination license or a disabled hunt motor vehicle permit and who possesses a valid tag may be accompanied, close enough to be within normal conversation or hearing range without shouting or the aid of electronic devices, by a designated companion who may assist the disabled hunter with taking a turkey or a sandhill crane. (7-16-12)T

**02. Valid License.** A companion to a disabled hunter must have a valid license when assisting a disabled hunter with taking turkey or sandhill crane. (7-16-12)T

**03. Excepted From Tag or Control Hunt Permit Possession.** A companion assisting a disabled hunter is excepted from tag or control hunt permit possession to take a turkey or sandhill crane wounded by a disabled hunter. All other applicable rules governing the taking of turkey and sandhill crane in this chapter shall apply to the companion assisting the disabled hunter. (7-16-12)T

**04. Validation and Attachment of Tag.** The companion to a disabled hunter may validate and attach the disabled hunter's tag on a turkey or sandhill crane per Subsections 100.02 and 100.03. (7-16-12)T

**05. Accompanying the Disabled Hunter.** The companion to a disabled hunter shall accompany the disabled hunter while hunting. Once the disabled hunter has wounded a turkey or sandhill crane, the companion does not need to be accompanied by the disabled hunter while taking a turkey or sandhill crane wounded by the disabled hunter or while tagging or retrieving a downed turkey or sandhill crane on behalf of the disabled hunter. (7-16-12)T

**06. Written Statement of Designation.** While taking a wounded turkey or sandhill crane to assist a disabled hunter, the companion to a disabled hunter shall possess a written statement of designation from the disabled hunter as their companion, signed by the disabled hunter including the disabled hunter's name, address, hunting license number, tag number and control hunt permit if applicable, and the dates of designation as a companion. If a companion to a disabled hunter transports a turkey or sandhill crane on behalf of a disabled hunter, a proxy statement is required per Section 36-502, Idaho Code. (7-16-12)T

**07. Companion's Possession Limit.** Turkey or sandhill crane killed, tagged, or retrieved by a designated companion on behalf of a disabled hunter do not count against the companion's possession limit. (7-16-12)T

**08. Disabled Hunter Considered for Violation.** The disabled hunter in possession of the valid tag shall be considered the hunter for violation of IDAPA 13.01.08, "Rules Governing the Taking of Big Game Animals in Idaho," Section 351, Waste of Game Meat. (7-16-12)T

**1042. -- 199. (RESERVED)**

## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO

DOCKET NO. 13-0109-1202

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is July 16, 2012.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b), 36-1101 and 36-1102(b), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 24, 2012.

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:

Specify that sandhill crane tags must be validated by removing the notches for month and day of kill (similar to the requirement for turkey tags).

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

The temporary rule confers a benefit to certain hunters, and these rules are needed for the 2012 Sandhill Crane hunting season.

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because there is a lack of identifiable representatives of resident and nonresident Sandhill Crane hunters. Interested persons are unlikely to reach consensus on tagging and permit validation requirements.

**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

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule and how an electronic copy can be obtained or, if otherwise unavailable, where copyrighted or other proprietary materials may be obtained: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game

600 S. Walnut  
P.O. Box 25, Boise, Idaho 83707  
(208) 334-3715, Fax (208) 334-2148

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 13-0109-1202**

**100. TAGS, STAMPS, PERMITS, AND VALIDATIONS.**

**01. Sage Grouse or Sharp-Tailed Grouse.** No person shall hunt sage or sharp-tailed grouse anywhere within the state, except licensed shooting preserves, without having in his or her possession the appropriate hunting license that has been validated for sage grouse and sharp-tailed grouse. The validation shall be valid from January 1 through December 31 of each year. (5-8-09)

**02. Migratory Game Birds.** No person shall hunt ducks, geese, brant, coots, Wilson's snipe, sandhill cranes, or mourning doves anywhere within the state, without having in his or her possession the appropriate hunting license that has been validated for the Federal Migratory Game Bird Harvest Information Program. The validation shall be valid from January 1 through December 31 of each year. (3-29-12)

**a. Tag validation and attachment: Immediately after any sandhill crane is killed, the sandhill crane tag must be validated and securely attached to the sandhill crane.** (7-16-12)T

**b. To validate the tag, the hunter must cut out and completely remove two (2) triangles on the border of the tag, one (1) for the month and one (1) for the day of the kill.** (7-16-12)T

**c. The tag must remain attached so long as the sandhill crane is in transit or storage.** (7-16-12)T

**03. Wild Turkey.** No person shall hunt wild turkey without having in his or her possession the appropriate hunting license, tag, and controlled hunt permit. Persons obtaining and using tags, stamps, and permits must comply with the following requirements: (7-1-98)

**a.** There are three (3) turkey tags available each calendar year. These are the general tag, extra tag, and special unit tag. Only three (3) turkey tags of the following may be purchased each year; one (1) general and two (2) extra. In addition to the previously mentioned three (3) turkey tags, three (3) special unit tags may also be purchased. A hunter may use the general tag to hunt in any spring general season or use the general tag with a controlled hunt permit to hunt in a controlled hunt. (3-29-12)

**b.** Permits for Controlled Hunts: Any person who receives a controlled hunt permit for wild turkey is prohibited from using that permit to hunt in any other wild turkey controlled hunt. (3-29-12)

**c.** Nonresident permit limitations: On controlled hunts with ten (10) or fewer permits, not more than one (1) permit will be issued to nonresidents. On controlled hunts with more than ten (10) permits, not more than ten percent (10%) of the permits may be issued to nonresidents. (7-1-98)

**d.** Eligibility: The holders of valid hunting licenses are eligible to apply for controlled hunts subject to the following restrictions: (7-1-93)

**i.** Holders of a Type 208 Nongame Hunting License may not apply for any controlled hunt. (7-1-93)

**ii.** In the event a permit is issued based on erroneous information, the permit will be invalidated and the person will remain on the drawn list. (7-1-93)

**e.** Applications: Applications for spring and fall controlled hunts shall be made on a form prescribed by the Department and must be received at the Headquarters Office of the Idaho Department of Fish and Game or postmarked not later than February 15 for spring hunts and July 15 for fall hunts, annually. Applications must comply with the following requirements: (5-8-09)

**i.** Holders of a Duplicate License (Type 501) must use their original license number to apply for a controlled hunt. Duplicate license numbers will not be accepted. (7-1-93)

ii. Only one (1) application card per person or group will be accepted. Additional application cards will result in all applicants being declared ineligible. (7-1-93)

iii. Fees: All applicants for controlled hunts must submit a non-refundable application fee with their application; one dollar (\$1) of this fee may be donated to the Citizens Against Poaching Program. (5-8-09)

iv. A single payment (either cashier's check, money order, certified check, or personal check) may be submitted to cover fees for all applications in the same envelope. If a check or money order is insufficient to cover the fees, all applications will be voided and returned. (2-7-95)

v. A "group application" is defined as two (2) hunters applying for the same controlled hunt on the same application. (2-7-95)

vi. Hunting license and tag fees will NOT be refunded to unsuccessful applicants. (7-1-93)

vii. All spring wild turkey hunters may apply for a Fall turkey controlled hunt permit during the same calendar year. (3-30-01)

f. Drawing information: Single or group applications which are not drawn for the first choice hunt will automatically be entered into a second choice drawing provided the second choice hunt applied for has not been filled. (7-1-93)

g. Tag validation and attachment: Immediately after any wild turkey is killed, the turkey tag must be validated and securely attached to the wild turkey. (7-1-93)

h. To validate the tag, the hunter must cut out and completely remove two (2) triangles on the border of the tag, one (1) for the month and one (1) for the day of the kill. (7-1-93)

i. The tag must remain attached so long as the turkey is in transit or storage. (7-1-93)

j. The Commission establishes youth-only controlled hunts by proclamation. Only hunters nine (9) to fifteen (15) years of age with a valid license may apply for youth-only controlled hunts, provided they are ten (10) to fifteen (15) years of age during the hunt for which they are applying, EXCEPT hunters sixty-five (65) years of age or older or hunters with a senior combination hunting license or a disabled combination hunting license may apply for first-come, first-served leftover youth-only controlled hunt permits. Hunters nine (9) years of age with a valid license may apply for regular controlled hunts provided they are ten (10) years of age during the hunt for which they are applying. (4-7-11)

**04. Early September Canada Goose Hunts.** Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (3-29-12)

## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO

DOCKET NO. 13-0109-1203

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 36-104(b) and 36-1101, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 24, 2012.

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:

Change the WMA Permit marking requirement to require non-erasable ink and removal of notch on permits. Require that Eurasian collared doves be left unplucked while in the field or in transport to their final place of consumption to improve identification. Allow an exception to the Hagerman WMA hunting closure for Department sponsored waterfowl hunts.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), negotiated rulemaking was not conducted because interested persons are unlikely to reach consensus on tagging and permit requirements, or on exceptions to hunting closures.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule and how an electronic copy can be obtained or, if otherwise unavailable, where copyrighted or other proprietary materials may be obtained: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut  
P.O. Box 25, Boise, Idaho 83707  
(208) 334-3715  
Fax (208) 334-2148

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0109-1203**

**200. IDENTIFICATION OF SPECIES IN POSSESSION AND DURING TRANSPORTATION OR SHIPMENT.**

Any person in possession of or transporting or shipping any game birds must comply with the following requirements: (7-1-93)

**01. Wild Turkey.** The beard or leg of wild turkey must be left naturally attached to the carcass. (3-30-01)

**02. All Other Game Birds and Eurasian-Collared Doves.** One (1) fully-feathered wing or the head must be retained on all other dressed game birds to permit identification as to species and sex while being transported between the place where taken and the personal abode of the possessor OR between the place where taken and a commercial processing or storage facility. (~~7-1-93~~)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**400. AREAS CLOSED TO HUNTING OF GAME BIRDS.**

**01. General.** Hunting, killing, or molesting of any game bird is prohibited in the following areas: (7-1-93)

**a.** That area of Craters of the Moon National Monument in Blaine and Butte Counties prior to the November 2000 expansion of the Monument by Presidential decree. It is the hunter's responsibility to check with the Park Service to be able to identify the closed area. (4-6-05)

**b.** Hagerman Fossil Beds National Monument in Twin Falls County, EXCEPT that portion within an area fifty (50) feet in elevation above the high water level of the Snake River (the upslope area is marked by yellow fiberglass markers, and hunting is permitted downslope to the river). (3-20-97)

**c.** Harriman State Park Wildlife Refuge in Fremont County. (7-1-93)

**d.** Nez Perce National Historical Park in Clearwater, Idaho, and Nez Perce Counties. (7-1-93)

**e.** That portion of Ada County within Veterans Memorial Park and the area between State Highway 21, Warm Springs Avenue and the Boise City limits. (5-3-03)

**f.** Yellowstone National Park in Fremont County. (7-1-93)

**g.** Fort Boise Wildlife Management Area (WMA) in Canyon County from September 15 through the end of the waterfowl hunting season in the area enclosed by the following boundary: Beginning at the bridge across Sand Hollow Creek on Old Fort Boise Road approximately one hundred (100) yards west of the WMA headquarters, then north along the east bank of Sand Hollow Creek to its confluence with the Snake River, then north and northeast downstream along the east bank of the Snake River to the WMA boundary fence, then south and southeast along the WMA boundary fence to Old Fort Boise Road, then west on Old Fort Boise Road to the point of beginning. (3-20-97)

**h.** Roswell Marsh Wildlife Habitat Area in Canyon County on Sundays, Mondays, Tuesdays and Wednesdays from September 15 through the end of the waterfowl hunting season in the area south of Highway 18 and west of Pebble Lane (Roswell Marsh segment). (5-3-03)

**i.** On any of those portions of federal refuges, State game preserves, State wildlife management areas,



bird preserves, bird refuges, and bird sanctuaries for which bird hunting closures have been declared by legislative or Commission action EXCEPT as otherwise expressly stated below in Section 410 under Game Preserves Open to Hunting of Game Birds. (7-1-93)

**j.** Mann's Lake in Nez Perce County and extending three hundred (300) yards beyond the Bureau of Reclamation property that encompasses the lake. (4-6-05)

**02. Migratory Game Birds.** In addition to the areas listed above, hunting, killing, or molesting of any migratory game bird EXCEPT mourning dove is prohibited in the following areas. Areas CLOSED to hunting of migratory game birds: (7-1-93)

**a.** Fort Hall Indian Reservation in Bingham, Bannock, and Power Counties within three hundred (300) yards each way of the Fort Hall Bluffs from Bigbend Boat Launch to the west boundary of the Fort Hall Indian Reservation, and within one hundred (100) yards of any improved roadway or inhabited dwelling any place within the reservation boundary. (7-1-93)

**b.** Hagerman Wildlife Management Area (WMA) in Gooding County in the area enclosed by the following boundary: Beginning at a point two hundred (200) yards west of the point at which U.S. Highway 30 crosses the south bank of Gridley Island, then northwest along a line two hundred (200) yards southwest of and parallel to U.S. Highway 30 to a point two hundred (200) yards west of the junction of U.S. Highway 30 and the WMA entrance, then west and north and east along a line two hundred (200) yards outside of the WMA boundary which is marked by a fence, to the point at which the fence meets U.S. Highway 30, then east and south along a line five hundred (500) yards outside of the WMA boundary to the Snake River, then downstream along the north bank of the Snake River and then along the south bank of Gridley Island to the point where U.S. Highway 30 crosses the south bank of Gridley Island, then two hundred (200) yards west of U.S. Highway 30 to the point of beginning. Exception: Department sponsored youth waterfowl hunts. (4-2-08) ( )

**c.** Hubbard Reservoir in Ada County including the shoreline area within two hundred (200) yards of the existing water line. (7-1-93)

**d.** Mann's Lake in Nez Perce County and extending three hundred (300) yards beyond the Bureau of Reclamation property line that encompasses the lake. (3-15-02)

**e.** Mormon Reservoir in Camas County including the shoreline area within two hundred (200) yards of the ordinary high water line. (7-1-93)

**f.** Pend Oreille River in Bonner County within two hundred (200) yards each way of the ordinary high water line two thousand sixty-two and one-half (2,062.5) feet above sea level from the U.S. Highway 95 long bridge at Sandpoint downstream to an imaginary line between Springy Point on the south side of the river and Dover Peninsula on the north side of the river. (7-1-93)

**g.** Spokane River in Kootenai County from the Post Falls Dam to Lake Coeur d'Alene at the orange pilings, within two hundred (200) yards of the ordinary high water line two thousand one hundred twenty-eight (2,128) feet above sea level. (7-1-98)

**h.** Thompson Lake in Kootenai County in the area enclosed by the following center-of-roadway boundary and in the additional area within one hundred (100) yards of the exterior side of said boundary: Beginning at the junction of State Highway 97 and Thompson Lake Road 317 north of the town of Harrison, then along Thompson Lake Road 317 to the junction of Blue Lake Road 318 east of Thompson Lake, then along Blue Lake Road 318 to the junction of Anderson Lake Road 319 at Springston, then along Anderson Lake Road 319 to the Union Pacific Railroad tracks, then west along the Union Pacific Railroad tracks to the junction of State Highway 97 west of Harrison, then along State Highway 97 to the point of beginning. (7-1-93)

**03. Geese.** Areas CLOSED to the hunting of geese. In addition to the areas listed in Section 301 and Subsection 301.01 above, the hunting, killing, or molesting of any species of geese is prohibited in the following areas: (7-1-93)

a. Canyon County in the area enclosed by the following roadway boundary and within one hundred fifty (150) feet of the exterior side of said boundary (except that the closure shall extend to one hundred (100) yards from the exterior side of said boundary along that section commencing at the junction of Lake Shore Drive and Rim Road, then south on Rim Road to west Lewis Lane, then east on west Lewis Lane to Lake Shore Drive, then along Lake Shore Drive to Emerald Road): Beginning approximately three fourths (3/4) of a mile south of the City of Nampa at the junction of State Highway 45 (12th Avenue Road) and Greenhurst Road, then west following Greenhurst Road to its junction with Middleton Road, then north following Middleton Road to its junction with Lake Lowell Avenue, then west following Lake Lowell Avenue to its junction with Lake Avenue, then north following Lake Avenue to its junction with West Roosevelt Avenue, then west following West Roosevelt Avenue to its junction with Indiana Avenue, then north following Indiana Avenue to its junction with State Highway 55 (Karcher Road), then west following State Highway 55 to its junction with Riverside Road, then south following Riverside Road to the Deer Flat National Wildlife Refuge boundary, then west along boundary fence below lower embankment as posted to Lake Shore Drive, then in a southeast direction following Lake Shore Drive to its junction with Marsing Road, then east and south on Lake Shore Drive to Rim Drive, then south on Rim Drive to West Lewis Lane, then east on West Lewis Lane to Lake Shore Drive, then southeast on Lake Shore Drive to State Highway 45, then north on State Highway 45 to its junction with Greenhurst Road, the point of beginning. (7-1-93)

b. Hagerman Valley in Gooding and Twin Falls Counties in the area enclosed by the following boundary: Beginning at the Gridley Island Bridge on the Snake River, then south and east on U.S. Highway 30 to Miracle Hot Springs, then east on Twin Falls County 4800 North Road (River Road) to Banbury Hot Springs, then upstream approximately three hundred (300) yards to the Banbury Pipeline crossing the Snake River, then east across the Snake River at the Banbury Pipeline, continuing due east to a point two hundred (200) yards east of the east rim of the Snake River Canyon, then north along a line parallel to and two hundred (200) yards east of the Snake River Canyon rim to the Gooding County 3500 South Road (Camp Roach Road), then east on the 3500 South Road to the 1500 East Road, then north on the 1500 East Road to the 3200 South Road, then west on the 3200 South Road to the 1300 East Road, then north on the 1300 East Road to the 1200 East Road, then northwest and north on the 1200 East Road to the 3000 South Road, then west on the 3000 South Road to a point (which is five hundred (500) yards east of the intersection of the 3000 South Road and the Hagerman National Fish Hatchery Road) five hundred (500) yards east of the Hagerman Wildlife Management Area (WMA) boundary, then north and west five hundred (500) yards outside the Hagerman WMA boundary to U.S. Highway 30, then west and south two hundred (200) yards outside the Hagerman WMA boundary to the 2900 South Road, then west on the 2900 South Road to the 900 East Road, then due south to a point two hundred (200) yards north of the Snake River, then west and north two hundred (200) yards outside the high water line on the east bank of the Snake River to Lower Salmon Dam, then west across the Snake River, then south, southwest and east two hundred (200) yards outside the high water line on the west bank of the Snake River (including the Idaho Power Upper Salmon Dam diversion canal) to the Gridley Bridge on U.S. Highway 30, the point of beginning. (12-7-94)

c. Minidoka and Cassia Counties in the area enclosed by the following boundary: Within two hundred (200) yards of the high water line of the Snake River from Milner Dam upstream to Meridian Road (north side of the Snake River) and 650 East Road (south side of the Snake River), approximately six and one-half (6 1/2) miles east of the City of Burley. (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**600. PHEASANT SEASONS, BAG AND POSSESSION LIMITS.**

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (3-29-12)

**01. WMA Upland Game Permit. (4-2-08)**

a. Permit Requirement. Any person seventeen (17) years of age or older hunting for or having a pheasant in his or her possession on Fort Boise, C.J. Strike, Montour, Payette River, Sterling, Market Lake, Mud Lake, Cartier, or Niagara Springs Wildlife Management Areas must have a valid WMA Upland Game Bird Permit in

his or her possession. (5-8-09)

**b.** Permit Limit. The WMA Upland Game Bird Permit limit is six (6) cocks. Additional permits may be purchased. (4-2-08)

**c.** Recording Harvest. Any person harvesting a pheasant on any of the Wildlife Management Areas listed in Subsection 600.01.a. must immediately ~~record their harvest, in writing, on the back of their permit~~ validate their permit upon reducing a pheasant to possession by entering the harvest date and location in Non-Erasable ink, and removing a notch from the permit for each pheasant taken. ~~(3-29-12)~~( )

**02. Youth Pheasant Season.** This season shall be open statewide. (7-1-99)

**a.** Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possessions limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (4-6-05)

**b.** The Youth Pheasant Season shall be open for all licensed hunters fifteen (15) years of age or younger. All youth hunters must be accompanied by an adult eighteen (18) years or older. One (1) adult may take more than one (1) youth hunter. (5-3-03)

## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO

#### DOCKET NO. 13-0109-1204

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 36-104(b) and 36-1101, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 24, 2012.

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:

Rescind the Motorized Hunting Rule for these species.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), negotiated rulemaking was not conducted because the Motorized Hunting Rule is controversial. Hunters who use and ATV are unlikely to reach a consensus with hunters opposed to ATVs.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule and how an electronic copy can be obtained or, if otherwise unavailable, where copyrighted or other proprietary materials may be obtained: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut  
P.O. Box 25, Boise, Idaho 83707  
(208) 334-3715, Fax (208) 334-2148

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0109-1204

**302. ~~MOTORIZED VEHICLE USE RESTRICTIONS.~~**

~~The use of motorized vehicles by hunters as an aid to hunting game birds is restricted in certain areas. This use restriction is in addition to all federal, state and local laws, rules, regulations, ordinances and orders, including, but not limited to, any motorized vehicle licensing, registration, and permitting requirements and traffic laws. Hunters must comply with all motorized vehicle limits or prohibitions instituted by the landowner or land manager. Also, this use restriction rule is not an exception from, and is in addition to, the statutory prohibition against hunting from or by the use of any motorized vehicle set forth in Section 36-1101(b)(1), Idaho Code.~~ (4-6-05)

~~**01. Use Restriction.** In designated areas and hunts, hunters may only use motorized vehicles on established roadways which are open to motorized traffic and capable of being traveled by full-sized automobiles. Any other use by hunters is prohibited. All off-road use by hunters is prohibited.~~ (4-6-05)

~~**02. Exceptions.** This use restriction rule shall not apply to the following permissible motorized vehicle uses:~~ (4-6-05)

~~**a.** Holders of a valid Handicapped Persons Motor Vehicle Hunting Permit may use a motorized vehicle as allowed by the land owner or manager.~~ (4-6-05)

~~**b.** Hunters may use a motorized vehicle to retrieve downed game if such travel is allowed by the land owner or manager.~~ (4-6-05)

~~**c.** Hunters may use a motorized vehicle to pack camping equipment in or out if such travel is allowed by the land owner or manager; however, hunters shall not hunt while packing camping equipment.~~ (4-6-05)

~~**d.** Private landowners, their authorized agents and persons with written landowner permission may use a motorized vehicle on their private land; however, they may not hunt from or by the use of any motorized vehicle as prohibited by Section 36-1101(b)(1), Idaho Code.~~ (4-6-05)

~~**03. Restricted Areas and Hunts.** This motorized vehicle use restriction shall apply to identified areas and hunts in all Big Game Management Units. The hunts and areas with a motorized vehicle use restriction are identified in the Commission's Big Game Season Proclamation and Upland Game Bird Season Proclamation, which are published in a brochure available at department offices and license vendors.~~ (4-6-05)

~~**04. Defined Terms.**~~ (4-6-05)

~~**a.** A full-sized automobile shall be defined as any motorized vehicle with a gross weight in excess of one thousand five hundred (1,500) pounds.~~ (4-6-05)

~~**b.** An established roadway shall be defined as any road that is established, built, maintained, approved or designated by any governmental entity or private landowner for the purpose of travel by full-sized automobiles. An established roadway shows evidence of repeated use by full-sized automobiles, and may include a traveled way of natural earth with depressed wheel tracks and little or no vegetation in the wheel tracks.~~ (4-6-05)

~~**c.** A hunter shall be defined as a person engaged in the activity of hunting as defined in Section 36-202(j), Idaho Code.~~ (4-6-05)

**303. -- 399. (RESERVED)**

## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.16 - THE TRAPPING OF PREDATORY AND UNPROTECTED WILDLIFE AND THE TAKING OF FURBEARING ANIMALS

DOCKET NO. 13-0116-1201

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is July 16, 2012.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b) and 36-1101, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 24, 2012.

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:

Allow trapping on Wildlife Management Areas with number of trappers to be limited by Regional Supervisors. Clean up a rule to allow consolidation of wolf trapping rules in another rules chapter.

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

The temporary rule confers a benefit to certain trappers, and is needed for the 2012 Trapping Season.

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because trapping and wolves are very divisive topics. Interested persons are not likely to reach a consensus.

**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

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule and how an electronic copy can be obtained or, if otherwise unavailable, where copyrighted or other proprietary materials may be obtained: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game

600 S. Walnut  
P.O. Box 25, Boise, Idaho 83707  
(208) 334-3715, Fax (208) 334-2148

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 13-0116-1201**

**400. METHODS OF TAKE.**

**01. Furbearing Animals.** No person shall take beaver, muskrat, mink, marten, or otter by any method other than trapping. In Valley County and portions of Adams County in the Little Salmon River drainage, red fox may be taken only by trapping. (5-3-93)

**02. Hunting.** No person hunting permissible furbearing animals or predatory or unprotected wildlife shall: (7-1-93)

**a.** Hunt with any weapon the possession of which is prohibited by state or federal law. (7-1-93)

**b.** Hunt with dogs unless they comply with IDAPA 13.01.15, "Rules Governing the Use of Dogs." (7-1-93)

**c.** Hunt any furbearing animal with or by the aid of artificial light. (4-7-11)

**d.** Persons may hunt raccoon with the aid of an artificial light without a permit from the Director but no person hunting raccoon at night shall: (4-7-11)

**i.** Hunt from a motorized vehicle. (7-1-93)

**ii.** Use any light attached to any motor vehicle. (7-1-93)

**iii.** Hunt on private land without obtaining written permission from the landowner or lessee. (7-1-93)

**03. Trapping.** No person trapping furbearing animals or predatory or unprotected wildlife shall: (7-1-93)

**a.** Use for bait or scent, any part of a domestic or wild origin game bird, big game animal, upland game animal, game fish, or protected nongame wildlife. (4-7-11)

**b.** Use any set within thirty (30) feet of any visible bait. (4-6-05)

**c.** Use a dirt hole ground set with bait unless the person ensures that the bait remains covered at all times to protect raptors and other meat-eating birds from being caught accidentally. (4-7-11)

**d.** Use live animals as a bait or attractant. (4-6-05)

**e.** Place any ground, water, or other sets on, across, or within five (5) feet of center line of any maintained public trail. (4-7-11)

**f.** Place any ground set on, across, or within any public highway as defined in Section 36-202, Idaho Code; except ground sets may be placed underneath bridges and within and at culverts that are part of a public highway right-of-way. (4-7-11)

**g.** Place any ground set incorporating snare, trap, or attached materials within three hundred (300) feet of any designated public campground, trailhead, or picnic area. Cage or box live traps are permitted within three hundred (300) feet of designated public campgrounds, trailheads, or picnic areas as allowed by city, county, state, and federal law. (3-29-12)

**h.** Place or set any ground set snare without a break-away device or cable stop incorporated within the loop of the snare. (3-29-12)

~~i. Place or set any wolf snare without a diverter; or without a break-away device or cable stop incorporated within the loop of the snare. (3-29-12)~~

~~j.~~ Place any ground set incorporating a foothold trap with an inside jaw spread greater than nine (9) inches. (3-29-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**600. TRAPPING ON GAME PRESERVES AND WILDLIFE MANAGEMENT AREAS.**

**01. Game Preserves and Wildlife Management Areas.** All state game preserves and Department of Fish and Game Wildlife Management Areas are open to the taking of furbearing animals by licensed trappers during the open season declared for the areas in which they lie. ~~However, the Sterling Wildlife Management Areas are open to muskrat or mink trapping by controlled trapping permit only. (5-8-09)(7-16-12)T~~

**02. Contact or Registration Requirements.** Trappers who ~~are~~ desire to trapping on any of the following Wildlife Management Areas must ~~contact or~~ register in advance either at the management area headquarters or the regional office: ~~(7-1-93)(7-16-12)T~~

- a. Billingsley Creek. (7-1-93)
- b. Boise River. (7-1-93)
- c. Andrus. (7-1-99)
- d. Camas Prairie Centennial Marsh. (7-1-93)
- e. C.J. Strike. (7-1-93)
- f. Carey Lake. (7-1-93)
- g. Cartier Slough. (7-1-93)
- h. Coeur d'Alene River. (7-1-93)
- i. Craig Mountain. (7-1-93)
- j. Fort Boise. (7-1-93)
- k. Hagerman. (7-1-93)
- l. Market Lake. (7-1-93)
- m. McArthur Lake. (7-1-93)
- n. Montpelier. (7-1-93)
- o. Mud Lake. (7-1-93)
- p. Niagara Springs. (7-1-93)
- q. Payette. (7-1-93)



<b>r.</b>	Portneuf.	(7-1-93)
<b>s.</b>	Sand Creek.	(7-1-93)
<b>t.</b>	Snow Peak.	(7-1-93)
<b>u.</b>	Sterling.	(7-1-93)
<b>v.</b>	Tex Creek.	(7-1-93)
<b>w.</b>	Georgetown Summit.	(5-8-09)
<b>x.</b>	Blackfoot River.	(5-8-09)
<b>y.</b>	<u>Boundary Creek.</u>	<u>(7-16-12)T</u>
<b>z.</b>	<u>Cottonwood.</u>	<u>(7-16-12)T</u>
<b>aa.</b>	<u>Deer Parks.</u>	<u>(7-16-12)T</u>
<b>bb.</b>	<u>Farragut.</u>	<u>(7-16-12)T</u>
<b>cc.</b>	<u>Montour.</u>	<u>(7-16-12)T</u>
<b>dd.</b>	<u>Pend Oreille.</u>	<u>(7-16-12)T</u>
<b>ee.</b>	<u>Red River.</u>	<u>(7-16-12)T</u>
<b>ff.</b>	<u>St. Maries.</u>	<u>(7-16-12)T</u>

**03. Restrictions.** The Regional Supervisor where a wildlife management area (WMA) is located may establish limits on the number of trappers allowed on the WMA, a method of equitable allocation of trapping opportunity on a WMA, the number and types of sets allowed, and posting and reporting requirements. (7-16-12)T

## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.17 - RULES GOVERNING THE USE OF BAIT FOR TAKING BIG GAME ANIMALS

DOCKET NO. 13-0117-1201

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is July 16, 2012.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b) and 36-1101, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 24, 2012.

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:

Consolidate bear baiting and wolf trapping rules into one rules chapter. Establish gray wolf trapping requirements and methods of take. Allow the use of legally salvaged road kill as bait for trapping wolves. Allow the use of a trapped wolf carcass without the hide attached as bait. Eliminate requirements in Units 10 and 12 to remove bear baits from the field between the summer dog training season and fall season.

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

The temporary rule confers a benefit to hunters, trappers, and outfitters. These rules are needed for the 2012 Trapping and Hunting seasons.

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because trapping and wolves are very divisive topics. Bear baiting is a divisive topic. Interested persons are not likely to reach a consensus on these topics.

**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

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule and how an electronic copy can be obtained or, if otherwise unavailable, where copyrighted or other proprietary materials may be obtained: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut  
P.O. Box 25, Boise, Idaho 83707  
(208) 334-3715, Fax (208) 334-2148

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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 13-0117-1201**

**IDAPA 13**  
**TITLE 01**  
**CHAPTER 17**

**13.01.17 - RULES GOVERNING THE USE OF BAIT AND TRAPPING  
FOR TAKING BIG GAME ANIMALS**

**000. LEGAL AUTHORITY.**

The Idaho Fish and Game Commission is authorized under Sections 36-104(b) and 36-1101(a), Idaho Code, to adopt rules concerning the use of bait and trapping for taking big game animals. ~~(3-30-01)~~(7-16-12)T

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited in full as IDAPA 13.01.17.000, et seq., Idaho Fish and Game Commission Rules IDAPA 13.01.17, "Rules Governing the Use of Bait and Trapping for Taking Big Game Animals." ~~(3-30-01)~~(7-16-12)T

**02. Scope.** These rules establish the methods for using bait for taking and trapping big game animals in the state of Idaho. ~~(3-30-01)~~(7-16-12)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**100. USE OF BAIT FOR HUNTING.**

Bait for hunting is defined as any substance placed to attract big game animals, except liquid scent for deer and elk. Bait may be used to hunt ONLY black bear and ONLY under the following conditions, EXCEPT wolves gray wolf may be taken incidentally to bear baiting. ~~(4-7-11)~~(7-16-12)T

**01. Time.** (7-1-93)

**a.** No bait or bait container may be placed for the purpose of attracting or taking black bear prior to the opening of black bear take season EXCEPT in that portion of Unit 12 north of State Highway 12 southwest of the Doe Creek Road (Forest Service Road 566) and northeast of Cabin Creek and Forest Service Road 486, and bait may be placed one (1) week prior to the opening of bear season in Units 10, 12, 16A, 17, 19, 20, 20A, 26 and 27. ~~(5-8-09)~~(7-16-12)T

**b.** All bait, bait containers and materials must be removed and all excavations refilled no later than

seven (7) days after the close of each season; (spring, fall, or black bear dog training); EXCEPT bait, bait containers, and materials may remain in Units 10 and 12 between the dog training season and the fall hunt. ~~(5-8-09)~~(7-16-12)T

**02. Location.** (7-1-93)

**a.** No bait site may be located within two hundred (200) feet of any water (lake, pond, reservoir, year round free flowing spring and year round free flowing stream), or within two hundred (200) yards from any maintained trail or any road. (3-30-01)

**b.** No bait site may be located within one-half (1/2) mile of any designated campground or picnic area, administrative site, or dwelling. (7-1-93)

**03. Types.** (7-1-93)

**a.** No person shall use any part of a domestic or wild origin game bird, big game animal, upland game animal, game fish, or protected nongame wildlife for bait or scent. (4-7-11)

**b.** The skin must be removed from any mammal parts or carcasses used as bait. (7-1-93)

**c.** No person shall use salt in any form (liquid or solid) for bait. (3-29-10)

**04. Containers.** (7-1-93)

**a.** No bait may be contained within paper, plastic, glass, metal, wood or other nonbiodegradable materials, except that a single, metal container with a maximum size of fifty-five (55) gallons may be used if securely attached at the bait site. (7-1-93)

**b.** No bait may be contained in any excavated hole greater than four (4) feet in diameter. (7-1-93)

**05. Establishment of Bait Sites.** (7-1-93)

**a.** Any structures constructed at bait sites using nails, spikes, ropes, screws, or other materials must be removed by the permit holder within seven (7) days after the close of each season; spring, fall, or black bear dog training. (3-29-10)

**b.** All bait sites must be visibly marked at the nearest tree or on the bait container using a tag supplied by the Department. (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**201. -- ~~4399.~~ (RESERVED)**

**400. TRAPPING BIG GAME ANIMALS.**  
Trapping may be used to take ONLY gray wolf and ONLY under the following conditions. (7-16-12)T

**01. Defined Terms.** (7-16-12)T

**a.** 'Bait' for trapping purposes is defined as any animal parts; except bleached bones or liquid scent. (7-16-12)T

**b.** 'Ground set' is defined as any foothold trap, body-gripping trap, or snare originally set in or on the land (soil, rock, etc.). This includes any traps elevated up to a maximum of thirty-six (36) inches above the natural ground level. (7-16-12)T

- c. For trapping purposes, a 'public trail' is defined as any trail designated by any city, county, state, or federal transportation or land management agency on the most current official map of the agency. (7-16-12)T
- 02. Methods of Take When Trapping. No person trapping gray wolf shall: (7-16-12)T**
- a. Use any set, EXCEPT a ground set. (7-16-12)T**
- b. Use for bait or scent, any part of a domestic or wild origin game bird, big game animal, upland game animal, game fish, or protected nongame wildlife; EXCEPT: (7-16-12)T**
- i. Gray wolves may be trapped near a big game animal that has died naturally and the carcass has not been repositioned for trapping purposes. Natural causes shall not include any man-caused mortality. (7-16-12)T**
- ii. Gray wolves may be trapped using a carcass of a legally taken gray wolf with the hide removed. (7-16-12)T**
- iii. Gray wolves may be trapped using the parts of accidentally killed wildlife salvaged in accordance with IDAPA 13.01.10, "Rules Governing the Importation, Possession, Release, Sale or Salvage of Wildlife," Subsections 300.02.c. and 300.02.d. in Game Management Units as identified by the Commission's Big Game Season Proclamation. The Proclamation is published in a brochure available at department offices and license vendors. (7-16-12)T**
- c. Use any set within thirty (30) feet of any visible bait; including bait allowed in Subsection 400.02.b.i., 400.02.b.ii., and 400.02.b.iii. (7-16-12)T**
- d. Use a dirt hole ground set with bait unless the person ensures that the bait remains covered at all times to protect raptors and other meat-eating birds from being caught accidentally. (7-16-12)T**
- e. Use live animals as a bait or attractant. (7-16-12)T**
- f. Place any ground set on, across, or within five (5) feet of center line of any maintained public trail. (7-16-12)T**
- g. Place any ground set on, across, or within any public highway as defined in Section 36-202, Idaho Code; EXCEPT ground sets may be placed underneath bridges and within and at culverts that are part of a public highway right-of-way. (7-16-12)T**
- h. Place any ground set incorporating snare, trap, or attached materials within three hundred (300) feet of any designated public campground, trailhead, or picnic area. Cage or box live traps are permitted within three hundred (300) feet of designated public campgrounds, trailheads, or picnic areas as allowed by city, county, state, and federal law. (7-16-12)T**
- i. Place or set any ground set snare without a diverter; or without a break-away device or cable stop incorporated within the loop of the snare. (7-16-12)T**
- j. Place any ground set incorporating a foothold trap with an inside jaw spread greater than nine (9) inches. (7-16-12)T**
- k. Trap any gray wolf within one-half (1/2) mile of any active Department of Fish and Game big game feeding site. (7-16-12)T**
- l. Trap gray wolf within two hundred (200) yards of the perimeter of any designated dump ground or sanitary landfill. (7-16-12)T**
- 03. Trapping Hours. Trapped gray wolves may be dispatched any time of day or night. (7-16-12)T**
- 04. Wounding and Retrieving. No person shall wound or kill any big game animal without making a**

reasonable effort to retrieve it and reduce it to possession. (7-16-12)T

**05. Unlawful Methods of Take.** No person shall take big game animals as outlined in IDAPA 13.01.08, "Rules Governing the Taking of Big Game Animals in the State of Idaho" Section 410; EXCEPT trapped gray wolves may be dispatched with any rimfire rifle, rimfire handgun or any muzzleloading handgun. (7-16-12)T

**401. -- 449. (RESERVED)**

**450. TRAPS.**

**01. Checking Traps.** (7-16-12)T

**a.** No person shall place snares or traps for gray wolves, without visiting every trap or snare once every seventy-two (72) hours and removing any catch therein. (7-16-12)T

**b.** Trappers acting under authority of the U.S. Department of Agriculture, Animal Plant Health Inspection Service, Wildlife Services are exempt from this rule. (7-16-12)T

**02. Removing Trapped Animals of Another.** No person shall remove a gray wolf from the trap or snare of another person. (7-16-12)T

**03. Release of Non-Target Catches.** (7-16-12)T

**a.** All non-target species caught alive shall be released immediately. Non-target species are defined as any species caught for which the season is closed. (7-16-12)T

**b.** Any trapper who catches a non-target species that is dead shall: (7-16-12)T

**i.** Prior to removing the animal, record the date and species of animal caught. This information must be included in the mandatory furtaker harvest report. (7-16-12)T

**ii.** Remove the animal from the trap and take it into possession. (7-16-12)T

**iii.** Notify the Department of Fish and Game through the local Conservation Officer, Sub-Regional or Regional office within seventy-two (72) hours to make arrangements to transfer the animal to the Department. (7-16-12)T

**iv.** The Department will reimburse trappers ten dollars (\$10) for each bobcat, wolverine, otter, or fisher caught accidentally and turned in. (7-16-12)T

**04. Identification Tags for Traps.** All traps or snares shall have attached to the snare or the chain of every trap, a metal tag bearing: (7-16-12)T

**a.** Name and Address. In legible English, the name and current address of the trapper; or (7-16-12)T

**b.** Number. A six (6) digit number assigned by the Department. (7-16-12)T

**i.** Any person wishing to mark his traps and/or snares with a six (6) digit number must make application to the Department at a Regional office, the McCall office, or the Headquarters office. (7-16-12)T

**ii.** Any person who has been assigned a six (6) digit number to mark his traps and/or snares must notify the Department in writing at a Sub-Regional office, Regional office, or the Headquarters office within thirty (30) days of any change of address. (7-16-12)T

**451. -- 459. (RESERVED)**

**460. MANDATORY CHECK AND REPORT REQUIREMENTS.**

**01. Wolf Telephone Report.** Any trapper taking a gray wolf must report the harvest within seventy-two (72) hours by calling the Wolf Reporting Number, a toll-free telephone number published in the Big Game Season Proclamation. The Proclamation is published in a brochure available at Department offices and license vendors. (7-16-12)T

**02. Harvest Report and Presentation of Animal Parts.** In addition to other reporting requirements, any trapper taking a gray wolf must, WITHIN TEN (10) DAYS OF DATE OF KILL, comply with the mandatory check and report requirements by: (7-16-12)T

**a. Completing the relevant harvest report (big game mortality report or other report form as required) for the species taken.** (7-16-12)T

**b. Present the following animal parts so that Department personnel may collect biological data and mark the animal parts:** (7-16-12)T

**i. Gray Wolf: Skull and hide to be presented to a Conservation Officer or Regional Office for removal and retention of a premolar tooth, and to have the hide marked. No person who does not possess a fur buyer or taxidermist license and/or appropriate import documentation shall have in possession, except during the open season and for ten (10) days after the close of the season, any raw gray wolf pelt that does not have an official state export tag attached (either Idaho's or another state's official export documentation).** (7-16-12)T

**03. Trapping Report Completion.** All trappers shall fill out the mandatory furtaking harvest report provided by the Department. Trappers shall return the completed mandatory report to the Department of Fish and Game, Box 25, Boise, Idaho 83707, by July 31. Any trapper failing to make such a report by July 31 shall be refused a license to trap animals for the following year. (7-16-12)T

**461. MANDATORY WOLF TRAPPER EDUCATION CLASS.**

Individuals interested in trapping wolves must purchase a trapping license and successfully complete a wolf trapping education class held by the Idaho Department of Fish and Game prior to trapping for wolves. A certificate of completion and trapping license will be required to purchase tags for wolf trapping. Trappers who complete the class will not be required to take the class again in the future. (7-16-12)T

**462. -- 499. (RESERVED)**

**500. IDENTIFICATION OF ANIMALS THAT LEGALLY MAY BE TAKEN; TAG VALIDATION AND ATTACHMENT AND PROXY STATEMENT; IDENTIFICATION OF SEX, SIZE, AND/OR SPECIES IN POSSESSION AND DURING TRANSPORTATION OR SHIPMENT.**

Gray wolves may only be trapped and taken, and legally possessed in accordance with all rules outlined in Sections 300, 320, and 350 in IDAPA 13.01.08, "Rules Governing the Taking of Big Game Animals in the State of Idaho." (7-16-12)T

**501. -- 504. (RESERVED)**

**505. AREAS CLOSED TO HUNTING AND TRAPPING, AND TRAPPING ON GAME PRESERVES AND WILDLIFE MANAGEMENT AREAS.**

Gray wolves may only be trapped and taken, and legally possessed in accordance with all rules outlined in IDAPA 13.01.08, "Rules Governing the Taking of Big Game Animals in the State of Idaho," Section 500, and in accordance with all rules outlined in IDAPA 13.01.16, "The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals," Sections 600 and 650. (7-16-12)T

**506. -- 999. (RESERVED)**

**IDAPA 15 - OFFICE OF THE GOVERNOR**  
**MILITARY DIVISION - BUREAU OF HOMELAND SECURITY**

**15.06.03 - PUBLIC SAFETY COMMUNICATIONS RULES**  
**DOCKET NO. 15-0603-1201 (FEE RULE - NEW CHAPTER)**  
**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) Title 31-4816 (9), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

Public Safety Communications has not increased its fees for services to its customers for many years, the costs of doing business, goods and services have increased significantly. Public Safety Communication in order to continue to provide high technology services and products to its customers must increase the fees it charges.

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

**Fleet Communication Services**

<b>1. Fleet Vehicle Equipment Installation:</b>	<b>Minimum Charges</b>
1. Standard Enforcement Package	\$1,500.00
2. Special, Unmarked, or Disguise Package	\$1,300.00
3. Standard Vehicles – High Tier Radio	\$ 500.00
4. Standard Vehicles – Low / Mid Tier Radio	\$ 325.00
5. Standard Vehicles- Multi-Band	\$ 750.00
6. Non-Standard Fleet Packages	<i>(Will bid on individual fleets as needs arise)</i>
<b>2. Time and Materials Rate</b>	\$ 45.00/hr.
(Minimum 2-hour charge for any labor or travel costs)	
1. Travel Time & Mileage	Per Board of Examiners
2. Parts	Cost + Shipping + Processing

**Emergency Communication Services**

<b>1. Microwave Communication Services</b>	
<b>A. Leased Lines and Analog Circuit Rates</b>	
1. Radio Control Circuit	\$ 200.00
2. DS1 Circuit (T-1)	\$ 300.00
3. Ethernet Access Fee (Per Meg)	\$ 200.00
<b>B. Build Space Rental</b>	
(Equipment operating from mountaintop communications site)	
1. One customer provided equipment rack, occupying no more than 6 cubic feet of space -	\$125.00/mo.
<b>2. Radio Communication Services</b>	
<b>A. Maintenance Fees for Agency-Owned Equipment</b>	
1. Portables – Tier I – (16 channel or less)	\$ 17.50
2. Portables – Tier II – (greater than 16 channels or groups)	\$ 36.50



3. Mobile – Tier I – (16 channel –non split mount)	\$ 25.50
4. Mobile – Tier II – (greater than 16 channel and/or remote mount)	\$ 37.50
5. Mobile – Trunking – (trunking radio with multiple groups / zones)	\$ 45.00
6. Base Control – Local	\$ 60.00
7. Base Control – Mountain Top (per transmitter)	\$ 95.00
8. Repeater – Mountain Top (per transmitter)	\$ 95.00
9. Console Desktop – Local	\$ 60.00
10. Console – Multi-Channel – Small System – Single Position	\$ 165.00
11. Console – Multi-Channel – Large System – Per operator position	\$ 250.00
12. Miscellaneous Equipment Maintenance	<i>(Negotiated as determined)</i>
13. User Site Management Fees	<i>(Based on site fees, license, &amp; administrative costs)</i>
14. Other related systems or items will be quoted as needed	

**B. Radio Communication Equipment Space Rental**

(Equipment operating from mountaintop communication site)

1. One customer provided 72 x 19 inch equipment rack, (typically 1 radio transmitter per rack)  
\$ 125/month

**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:

By increasing the fees currently being charged by Public Safety Communications there would be a positive cash flow to PSC. This would have a negative effect on those agencies who are currently customers of Public Safety Communications by a like amount. It is important to note the PSC has not increased its price for services for several years and the costs of doing business have increase significantly.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the agency determined negotiation was not feasible.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Robert A. Wells, Special Assistant to the Director of the Idaho Bureau of Homeland Security, at 208-422-3041 or [bwells@bhs.idaho.gov](mailto:bwells@bhs.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th Day of August, 2012.

Robert A. Wells  
Special Assistant to the Director  
Idaho Bureau of Homeland Security  
4040 West Guard St., Building 600  
Boise, Idaho 83705-5004  
208-422-3041 / 208-422-3040 FAX

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**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 15-0603-1201**

**MILITARY DIVISION - BUREAU OF HOMELAND SECURITY**

**IDAPA 15**  
**TITLE 06**  
**CHAPTER 03**

**15.06.03 - PUBLIC SAFETY COMMUNICATIONS RULES**

**000. LEGAL AUTHORITY (RULE 0).**

This chapter is adopted under the authority of Section 39-7101, Idaho Code. ( )

**001. TITLE AND SCOPE (RULE 1).**

**01. Title.** The title of this chapter is the IDAPA 15.13.01, "Public Safety Communications Rules." ( )

**02. Scope.** The scope of this chapter is creation of Public Safety Communications authorities and rules pertaining to public safety communications services, fee structure for services, providing wireless interoperable communications, technical assistance and standards, microwave systems and high speed wireless bandwidth for state agencies' use in interoperable and public safety communications amongst local, state, federal, and tribal entities. ( )

**002. WRITTEN INTERPRETATIONS (RULE 2).**

In accordance with Section 67-5747(a)(i)(ii)(iii)(iv), Idaho Code, the agency Public Safety Communications has been transferred from the Department of Administration to the Idaho Military Division; which now pertain to the interpretation of the rules of this chapter or to the documentation of compliance with the rules of this chapter. Included in these written statements is the charge of providing communications services to all state agencies except the executive office, state courts, and higher education. Pursuant to Section 67-5747(a) (i)(iii)(iv), Idaho Code. ( )

**003. ADOPTION OF ATTORNEY GENERAL'S IDAHO RULES OF PROCEDURE (RULE 3).**

IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," are adopted for all contested cases before the Military Division and all rulemaking by the Military Division. ( )

**004. (RESERVED)**

**005. OFFICE, OFFICE HOURS, MAILING ADDRESS, TELEPHONE NUMBERS (RULE 5).**

**01. Address.** The main office of the Idaho Public Safety Communications-Bureau of Homeland Security is located at 700 South Stratford Drive, Building 600, Meridian, Idaho 83642. ( )

**02. Office Hours.** Office hours are weekdays, 8:00- a.m. to 4:30 p.m., excluding holidays. ( )

**03. Telephone.** The telephone number is (208) 288-4000. The twenty four (24) hour emergency notification number is 800-632-8000 or 208-846-7610. ( )

**006. (RESERVED)**

**007. COMMUNICATION WITH MILITARY DIVISION, BUREAU OF HOMELAND SECURITY (RULE 7).**

**01. Records Custodian.** The Military Division, Bureau of Homeland Security, is the custodian of all records and files in all formal proceedings under these rules and is responsible for service of all orders and notices. Unless otherwise directed by order, the Director, Bureau of Homeland Security issues all official notices. ( )

**02. Filing.** All written communications and documents that are intended to be part of an official Military Division record for a decision in a contested case or a rulemaking must be filed with the Director. Unless otherwise provided by statute, these rules, order or notice, documents are considered filed when received by the Director, not when mailed. ( )

**03. Information.** Information concerning proceedings before the Military Division, or the status of any matter of public record is available from the Director, Bureau of Homeland Security. ( )

**008. -- 009. (RESERVED)**

**010. DEFINITIONS (RULE 10).**

**01. Public Safety Communications.** The Agency. Public Safety Communications (PSC) is a unit within Idaho Military transferred from the Department of Administration to the Idaho Military Division under House Bill 305. PSC is charged with “the acquisition and installation of all State public safety radio and microwave systems in support of state emergency communications and will be under the control of the Military Division”. This transfer was accomplished to enhance services and coordination for emergency operations and logistics through federal channels already in place within the Idaho Military Division. ( )

**02. Public Safety Communications.** The ability to transmit voice, video and data sent electronically by means of radio, wireless, data, fiber, leased lines circuits, and digital transmission for emergency and first responders. Public safety communications systems is equipment or systems used in providing interoperable means of communications amongst local, state, federal and tribal agencies. These systems and equipment give emergency and first responders the ability to respond to normal and emergency situations in carrying out each respective agencies duties and responsibilities. These public safety communications systems are used to carry out the normal operations and emergency operations in the protection of life, property and civil authority. ( )

**03. Interoperable Communications.** The condition achieved among communications-electronics systems or items of communications-electronic equipment when information or services can be exchanged directly and satisfactorily between them and/or their users. Interoperability specifically refers to the ability of emergency response officials to share information via voice and data signals on demand, in real time, when needed and as authorized. ( )

**04. Wireless Communications.** Is the ability to transfer information over distant utilizing electromagnetic waves through space as the medium to send voice, video, data, and information. Wireless communications for interoperability specifically refers to the ability of emergency response officials to share information via voice and data signals on demand, in real time, when needed, and as authorized. ( )

**a. Radio Systems.** These wireless systems are typically known as Land Mobile Radio or LMR. Land Mobile Radio Systems are the main wireless communications systems deployed by public safety communications for emergency and first responders. ( )

**b. Data Systems.** These wireless systems are used to transmit data at rates typically from 1.2 kilobit up to approximately 1 megabit. These systems are used to send data and text messaging utilized by emergency and first responders. ( )

**c. Video Systems.** These wireless systems are used to transmit video and closed circuit television (cctv) for use by emergency and first responders. These systems also carry full motion video for broadcast use such as Idaho Public Television. ( )

**d. Broadband Systems.** These wireless systems are used to transmit voice, video, and data information in multiple applications. These systems can either be point-to-point links or point to multi-point systems deployed today by emergency and first responders. ( )

**05. Microwave Systems.** Equipment or apparatus that utilize electromagnetic wavelengths between 1 meter down to 1 millimeter with the equivalent operating frequency between 0.3 GHz and 300 GHz to transmit and receive information. These transmissions are sent on micro-wave links which is a communications system operating between 0.3 GHz – 300 GHz that use electromagnetic waves to send voice, video and data information over distances ranging from a few feet to several hundred miles. ( )

**011. ABBREVIATIONS (RULE 11).**

- 01. PSC.** Public Safety Communications. ( )
- 02. BHS.** Idaho Bureau of Homeland Security. ( )
- 03. LMR.** Land Mobile Radio. ( )
- 04. I.P.** Internet Protocol – (Ethernet based systems). ( )
- 05. GHz.** Gigahertz (measured in cycles per second). ( )

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

**100. FEES (RULE 100).**

**01. Fee Schedule for Services.** Public Safety Communications is a dedicated funded agency. It receives no direct funding from the state’s general fund. The agency must therefore charge for the services that it provides to local, state, federal and tribal agencies, emergency and first responders. Public Safety Communication fees listed are minimum rates and can be adjusted annually, based on the CPI index and or as contracts are negotiated or renewed. These fees are used to maintain and operate the various communications systems that Public Safety Communications (the agency) is charged to maintain and provide. ( )

**02. Fleet Communication Services.** ( )

**a. Fleet Vehicle Equipment Installation:**

<b>FLEET VEHICLE EQUIPMENT INSTALLATION</b>		<b>Minimum Charges</b>
1.	Standard Enforcement Package	\$1,500.00
2.	Special, Unmarked, or Disguise Package	\$1,300.00
3.	Standard Vehicles – High Tier Radio	\$ 500.00
4.	Standard Vehicles – Low / Mid Tier Radio	\$ 325.00
5.	Standard Vehicles- Multi-Band	\$ 750.00
6.	Non-Standard Fleet Packages	Will bid on individual fleets as needs arise

( )

**b. Time and Materials Rate:**

<b>TIME AND MATERIALS RATE</b>		<b>\$45.00 / Hr</b>
<b>(Minimum 2-hour charge for any labor or travel costs)</b>		
1.	Travel Time & Mileage	Per Board of Examiners

<b>TIME AND MATERIALS RATE</b>		<b>\$45.00 / Hr</b>
(Minimum 2-hour charge for any labor or travel costs)		
2.	Parts	Cost + Shipping + Processing

( )

**03. Emergency Communication Services.**

( )

**a. Microwave Communication Services:**

<b>MICROWAVE COMMUNICATION SERVICES</b>		<b>Month</b>
<b>Leased Lines &amp; Analog Circuit Rates</b>		
1.	Radio Control Circuit	\$ 200.00
2.	DS1 Circuit (T-1)	\$ 300.00
3.	Ethernet Access Fee (Per Meg)	\$ 200.00

( )

**b. Building Space Rental - (Equipment operating from mountaintop communications site):**

<b>BUILDING SPACE RENTAL</b>		
<b>Equipment Operating From Mountaintop Communications Site</b>		
1.	One customer provided equipment rack, occupying no more than 6 cubic feet of space	\$ 125.00 / month

( )

**c. Radio Communication Services:**

<b>RADIO COMMUNICATION SERVICES</b>		<b>Monthly Rate / Unit</b>
<b>Maintenance Fees for Agency-Owned Equipment</b>		
1.	Portables – Tier I (16 channel or less)	\$ 17.50
2.	Portables – Tier II (greater than 16 channels or groups)	\$ 36.50
3.	Mobile – Tier I (16 channel-non split mount)	\$ 25.50
4.	Mobile – Tier II (greater than 16 channel and/or remote mount)	\$ 37.50
5.	Mobile – Trunking (trunking radio with multiple groups / zones)	\$ 45.00
6.	Base Control – Local	\$ 60.00
7.	Base Control – Mountain Top (per transmitter)	\$ 95.00
8.	Repeater – Mountain Top (per transmitter)	\$ 95.00
9.	Console Desktop – Local	\$ 60.00
10.	Console – Multi-Channel – Small System – Single Position	\$ 165.00
11.	Console – Multi-Channel – Large System – Per operator position	\$ 250.00

<b>RADIO COMMUNICATION SERVICES</b>		<b>Monthly Rate / Unit</b>
<b>Maintenance Fees for Agency-Owned Equipment</b>		
(The multi-channel large system console is computed by multiplying the number of operator positions by the monthly rate/unit.)		
12.	Miscellaneous Equipment Maintenance	(Negotiated as determined)
13.	User Site Management Fees	(Based on site fees, license, and administrative costs)
14.	Other related systems or items	(Will be quoted as needed)

( )

**d.** Radio Communication Equipment Space Rental - (Equipment operating from mountain-top communications site):

<b>RADIO COMMUNICATION EQUIPMENT SPACE RENTAL</b>		
<b>Equipment Operating From Mountain-Top Communications Site</b>		
1.	One customer provided 72 x 19 inch equipment rack, (typically one radio transmitter per rack)	\$ 125.00 / month

( )

**101. -- 999. (RESERVED)**

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO**  
**DOCKET NO. 16-0304-1201**  
**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is October 1, 2012.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-203, Idaho Code, and 7 CFR Part 273.1(c).

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

**Tuesday - October 23, 2012 - 10 a.m. MDT**

**DHW Region IV Office  
1720 N. Westgate Drive  
Suite A, Room 131  
Boise, ID 83704**

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

**DESCRIPTIVE SUMMARY:** The following is 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:

Currently, food stamp benefits for a child are given to the first parent who applies for benefits for the child regardless of the amount of time the child lives in the home. This rule change is necessary to provide a more equitable way of determining food stamp benefits for a child when both parents apply for food stamp benefits for the child, by giving the parent with the primary physical custody the food stamp benefit.

**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:

These rules confer a benefit to provide that a child receives his food stamp benefit in the home with the parent who has primary custody.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

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

There is no fiscal impact to state general funds for this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is a temporary rule and was not feasible for the Department to negotiate the change.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Rosie Andueza at (208) 334-5553.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 29th day of August, 2012.

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

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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 16-0304-1201**

**214. JOINT CHILD CUSTODY.**

*In joint custody situations, children may move from one (1) parent's home to the other parent's home on a regular schedule during the month. If only one (1) parent applies, the child may be included in that parent's household. If both parents apply, they must be told no child can participate in two (2) Food Stamp households in the same month. The parents should decide which household will include the child. Where there are two (2) or more children, the children may be a member of either but not both households. If the parents cannot agree on the child's household for Food Stamps, include the child in the household of the first parent to apply. Assign the shortest allowable certification period. For a child who is under the age of eighteen (18), the parent who has primary physical custody is eligible to receive Food Stamp benefits for that child. If both parents request food stamp benefits for the child, primary custody is determined by where the child is expected to spend fifty-one percent (51%) or more of the nights during a certification period. When only one (1) parent applies for food stamp benefits, the child may be included in that parent's household even though they do not have primary physical custody of the child.* ~~(6-1-94)~~(10-1-12)T



**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO**  
**DOCKET NO. 16-0304-1202**  
**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is September 1, 2012.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202 and 56-203, Idaho Code, and 7 CFR, Part 273.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

These rule changes align Idaho's Food Stamp Program with state law and federal regulations. The changes also support operational changes being made in the administration of the Food Stamp Program. The term "guide dog" has been changed to "service animal." Clarification for a spouse has been updated to remove reference to "common law marriage" that is no longer recognized in Idaho. To support operational changes, clarification has been made to update the application process requirements for screening of an applicant, and removing the requirement that an applicant apply at the office serving the area where the applicant resides.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate to bring the Idaho Food Stamp program rules into compliance by aligning these rules with both federal regulations and state law.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

**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(2), Idaho Code, negotiated rulemaking was not conducted because the rule is a temporary rule and was not feasible for the Department to negotiate the change.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Rosie Andueza at (208) 334-5553.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 29th day of August, 2012.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720

Boise, ID 83720-0036  
phone: (208) 334-5564  
fax: (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT  
OF DOCKET NO. 16-0304-1202

**012. DEFINITIONS M THROUGH Z.**

For the Food Stamp Program, the following definitions apply: (4-11-06)

**01. Migrant Farmworker Household.** A migrant farmworker household has a member who travels from community to community to do agricultural work. (4-6-05)

**02. Minimum Utility Allowance (MUA).** Utility deduction given to a food stamp household that has a cost for one (1) utility that is not heating, cooling, or telephone. (3-29-10)

**03. Nonexempt.** A household member who must register for and participate in the JSAP program. A household member who must register for work. (6-1-94)

**04. Nonprofit Meal Delivery Service.** A political subdivision or a private nonprofit organization, which prepares and delivers meals, authorized to accept Food Stamps. (6-1-94)

**05. Overissuance.** The amount Food Stamps issued exceeds the Food Stamps a household was eligible to receive. (6-1-94)

**06. Parental Control.** Parental control means that an adult household member has a minor in the household who is dependent financially or otherwise on the adult. Minors, emancipated through marriage, are not under parental control. Minors living with children of their own are not under parental control. (4-6-05)

**07. Participant.** A person who receives Food Stamp benefits. (4-6-05)

**08. Program.** The Food Stamp Program created under the Food Stamp Act and administered in Idaho by the Department. (6-1-94)

**09. Public Assistance.** Public assistance means Temporary Assistance for Families in Idaho (TAFI), and Aid to the Aged, Blind, and Disabled (AABD). (4-6-05)

**10. Recertification.** A recertification is a process for determining ongoing eligibility for Food Stamps. (4-11-06)

**11. Retail Food Store.** A retail food store, for Food Stamp purposes means: (6-1-94)

**a.** An establishment, or recognized department of an establishment, or a house-to-house food trade route, whose food sales volume is more than fifty percent (50%) staple food items for home preparation and consumption. (6-1-94)

**b.** Public or private communal dining facilities and meal delivery services. (6-1-94)

**c.** Private nonprofit drug addict or alcohol treatment and rehabilitation programs. (6-1-94)

**d.** Public or private nonprofit group living arrangements. (6-1-94)

**e.** Public or private nonprofit shelters for battered women and children. (6-1-94)

**f.** Private nonprofit cooperative food purchasing ventures, including those whose members pay for food prior to the receipt of the food. (6-1-94)

**g.** A farmers' market. (6-1-94)

- h.** An approved public or private nonprofit establishment which feeds homeless persons. The establishment must be approved by FCS. (7-1-98)
- 12. Sanction.** A penalty period when an individual is ineligible for Food Stamps. (3-30-07)
- 13. Seasonal Farmworker Household.** A seasonal farmworker household has a member who does agricultural work of a seasonal or other temporary nature. (4-6-05)
- 14. Spouse.** Persons who are ~~living together,~~ **legally** married ~~or free to marry, and are holding themselves out as man and wife~~ **under Idaho law.** (4-6-05)(9-1-12)T
- 15. Standard Utility Allowance (SUA).** Utility deduction given to a food stamp household that has a cost for heating or cooling. (4-11-06)
- 16. State.** Any of the fifty (50) States, the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands and the Virgin Islands of the United States. (6-1-94)
- 17. State Agency.** The Idaho Department of Health and Welfare. (6-1-94)
- 18. Student.** An individual between the ages of eighteen (18) and fifty (50), physically and intellectually fit, and enrolled at least half-time in an institution of higher education. (6-1-94)
- 19. Supplemental Security Income (SSI).** Monthly cash payments under Title XVI of the Social Security Act. Payments include state or federally administered supplements. (4-11-06)
- 20. Systematic Alien Verification for Entitlements (SAVE).** The federal automated system that provides immigration status needed to determine an applicant's eligibility for many public benefits, including Food Stamps. (4-11-06)
- 21. Telephone Utility Allowance (TUA).** Utility deduction given to a Food Stamp household that has a cost for telephone services and no other utilities. (3-29-10)
- 22. Timely Notice.** Notice that is mailed via the U. S. Postal Service, or electronically, at least ten (10) days before the effective date of an action taken by the Department. (3-29-12)
- 23. Twelve Month Contact.** For households that have a twenty-four (24) month certification period, Department staff contact the household during the twelfth month of the certification period for the purpose of determining continued eligibility. (4-6-05)
- 24. Tribal General Assistance.** Cash, excluding in-kind assistance, financed by federal, state or local government and provided to cover living expenses or other basic needs. This cash is intended to promote the health and well-being of recipients. (4-11-06)
- 25. Verification.** The proof obtained to establish the accuracy of information and the household's eligibility. (6-1-94)
- 26. Verified Upon Receipt.** Food stamp benefits are adjusted on open food stamp cases when information is received from "verified upon receipt" sources. Information "verified upon receipt" is received from a manual query or automated system match with the Social Security Administration or Homeland Security query for citizenship status. (3-30-07)
- 27. Written Notice.** Correspondence that is generated by any method including handwritten, typed, or electronic, delivered to the customer by hand, U.S. Mail, professional delivery service, or by any electronic means. The terms "notice" and "written notice" are used interchangeably. (3-29-12)

(BREAK IN CONTINUITY OF SECTIONS)

~~108. WRONG FIELD OFFICE CONTACTED.~~

~~If a household contacts the wrong Field Office, the Department will give the household the address and phone number of the correct Field Office. The Department will offer to forward the AFA to the correct Field Office, and tell the household the AFA is not filed and processing standards do not start until the AFA gets to the correct field office. The AFA must contain the applicant's name, address, signature and date of application. The AFA must be date stamped and mailed to the correct Field Office the same day, or delivered to the correct Field Office the next day.~~  
(3-15-02)

~~109. AFA MAILED TO WRONG FIELD OFFICE.~~

~~If the AFA was mailed to the wrong Field Office, the Department will mail the AFA to the correct Field Office. The AFA must be mailed to the correct Field Office the same day it is received.~~  
(6-1-94)

~~108. -- 109. (RESERVED)~~

110. APPLICANTS WHO MOVE **OUT OF IDAHO.**

~~When a Food Stamp applicant moves within Idaho, the sending and receiving Field Offices must act to transfer the case and change the address.~~  
(4-11-06)

~~01. Duties of Sending Field Office. If an applicant household is moving and submits its application to a Field Office other than the one serving the area where it is moving, the sending office must transfer the case. Duties of the sending Field Office are:~~  
(6-1-94)

~~a. Give household new field office information. The sending Field Office must give the household the address and telephone number of the correct Field Office.~~  
(6-1-94)

~~b. Forward application. The sending Field Office must offer to forward the application and case record to the proper Field Office. The application and case record must be sent the same day the contact is made with the wrong Field Office.~~  
(6-1-94)

~~c. Inform applicant. The sending Field Office must tell the household its application has been filed and will be forwarded to the proper Field Office.~~  
(6-1-94)

~~d. Mail application same day as received. If the application was mailed to the wrong Field Office, it must be mailed to the proper Field Office the same day it is received.~~  
(6-1-94)

~~02. Duties of Receiving Field Office. The receiving Field Office must schedule an interview with the applicant household. The interview may be face-to-face, by telephone or by home visit. The application must be approved or denied within the specified time limits.~~  
(6-1-94)

~~03. Duties When Applicant Moves Out of Idaho. If all members of a Food Stamp applicant household move outside of Idaho, determine eligibility for the month(s) in which they resided in Idaho, as long as duplicate participation in another state does not occur. Close the case effective the end of the month in which the household moves out of Idaho. A closure notice is not required.~~  
(4-11-06)(9-1-12)T

(BREAK IN CONTINUITY OF SECTIONS)

155. EXPEDITED SERVICE ELIGIBILITY.

~~Application forms Applicants~~ must be screened to determine if the household is entitled to expedited service. The household must meet one (1) of the expedited service criteria below. The household must have provided proof postponed by the last expedited service or have been certified under the normal standards since the last expedited service.  
(6-1-94)(9-1-12)T

**01. Low Income and Resources.** To receive expedited services the household's monthly countable gross income must be less than one hundred fifty dollars (\$150) and the household's liquid resources must not exceed one hundred dollars (\$100). (6-1-94)

**02. Destitute.** To receive destitute expedited services the household must be a destitute migrant or seasonal farmworker household. The household's liquid resources must not exceed one hundred dollars (\$100). (7-1-97)

**03. Income Less Than Rent and Utilities.** The household's combined monthly gross income and liquid resources are less than their monthly rent, or mortgage, and utilities cost. (6-1-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**535. MEDICAL EXPENSES.**

Medical expenses over thirty-five dollars (\$35), for elderly or disabled household members, are deducted from the household income. Allowable medical expense deductions are listed in Subsection 535.01 through 535.14 of these rules. The household must provide proof of the incurred or anticipated cost before a deduction is allowed. (3-30-07)

**01. Medical and Dental Services.** Services must be performed by licensed practitioners, physicians, dentists, podiatrists, or other qualified health professionals. Other qualified health professionals include registered nurses, nurse practitioners, licensed physical therapists and licensed chiropractors. (6-1-94)

**02. Psychotherapy and Rehabilitation Services.** Services must be performed by licensed psychiatrists, licensed clinical psychologists, licensed practitioners, physicians or other qualified health professionals. (6-1-94)

**03. Hospital or Outpatient Treatment.** Hospital or outpatient treatment includes expenses for hospital, nursing care, State licensed nursing home care, and care to a person immediately before entering a hospital or nursing home. (4-6-05)

**04. Prescription Drugs.** Prescription drugs and prescribed over-the-counter medication including insulin. (6-1-94)

**05. Medical Supplies and Sickroom Equipment.** Medical supplies and sickroom equipment including rental or other equipment. (6-1-94)

**06. Health Insurance.** Health and hospitalization insurance premiums. These do not include health and accident policies payable in a lump sum for death or dismemberment. These do not include income maintenance policies to make mortgage or loan payments while a beneficiary is disabled. (6-1-94)

**07. Medicare Premiums.** Medicare premiums related to coverage under Title XVIII of the Social Security Act. (6-1-94)

**08. Cost-Sharing or Spend-Down Expenses.** Cost-sharing or spend-down expenses incurred by Medicaid recipients. (6-1-94)

**09. Artificial Devices.** Dentures, hearing aids, and prostheses. (6-1-94)

**10. ~~Guide-Dog~~ Service Animal.** Expenses incurred buying and caring for any animal ~~trained and routinely used to help~~ that has received special training to provide service to a disabled person. Expenses include costs for ~~dog~~ the service animal's food, training, and veterinary services. ~~(4-6-05)~~(9-1-12)T

**11. Eyeglasses.** Expenses for eye examinations and prescribed eyeglasses. (4-6-05)

**12. Transportation and Lodging.** Reasonable transportation and lodging expenses incurred to get medical services. (4-6-05)

**13. Attendant Care.** Attendant care costs necessary due to age, disability, or illness. If attendant care costs qualify for both the excess medical and dependent care expense deductions, the cost is treated as a medical expense. (4-6-05)

**14. Attendant Meals.** An amount equal to the maximum Food Stamp allotment for a one (1) person household per month is deducted if the household provides most of the attendant's meals. (3-29-10)

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

**DOCKET NO. 16-0305-1201**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202 and 56-203, Idaho Code.

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

**Friday - October 12, 2012 - 10:00 a.m. MDT**

**DHW Region IV Office**  
**1720 N. Westgate Drive**  
**Suite A, Room 131**  
**Boise, ID 83704**

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

**DESCRIPTIVE SUMMARY:** The following is 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 response to a petition for rulemaking from the Trust and Estate Professionals of Idaho (TEPI), the Department is amending these rules to align the asset transfer penalties for Medicaid applicants under the home and community based services (HCBS) with those applicants who reside in a nursing facility. By allowing HCBS applicants to have an asset transfer penalty period implemented, will remove the disparity between the Nursing Home and Home Community Based Services (HCBS) participants.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

**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 Department considers this rule change to be cost neutral. The intent of this change is for eligible participants to receive the most cost-effective level of service and to be able to stay in the community rather than be forced into a nursing facility.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the March 7, 2012, Idaho Administrative Bulletin, [Vol. 12-3, page 29](#).

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Shannon Epperley at (208) 334-5969.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 29th day of August, 2012.

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

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0305-1201**

**835. APPLYING THE PENALTY PERIOD OF RESTRICTED COVERAGE.**

Restricted coverage continues until the participant or spouse recovers all the assets, receives fair market value at the time of the transfer for all of the assets, or the period of restricted coverage ends. The penalty continues whether or not the participant is in long-term care. The penalty period for asset transfers is applied as follows: (3-30-07)

**01. Penalty Period for Transfer Prior to February 8, 2006.** For assets transferred prior to February 8, 2006, there is no penalty if the amount transferred is less than the cost of one (1) month's care. The penalty period begins running the month the transfer took place. The month the transfer took place is counted as one (1) of the penalty months. A penalty period is computed for each transfer. A penalty period must expire before the next begins. Each partial month before the end of consecutive penalty periods is a penalty month. A partial month at the end of consecutive penalty periods is dropped. (3-30-07)

**02. Penalty Period for Transfers On or After February 8, 2006.** For assets transferred on or after February 8, 2006, the penalty period begins running the first day of the month after the month the transfer took place or was discovered to have taken place, or the date the individual would have been eligible for long-term care services or HCBS, if not for the transfer, whichever date is later in time. The value of all asset transfers made during the look-back period is accumulated for the purpose of calculating the penalty. If an additional transfer is discovered after the penalty has been served, a new penalty period begins the month following timely notice of closure of benefits. When a penalty period ends after the first day of the month, eligibility for long-term care services begins the day after the penalty period ends. (~~3-30-07~~)( )



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

**DOCKET NO. 16-0305-1202**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202 and 56-203, Idaho Code.

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

<b>Monday, October 22, 2012</b> <b>1 p.m. MDT</b>
<b>DHW Region IV Office</b> <b>1720 N. Westgate Drive</b> <b>Suite A, Room 131</b> <b>Boise, ID 83704</b>

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

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

These rules are being amended to provide a more equitable division of future cost of living allowance (COLA) increases between the participant's personal needs allowance (PNA) and the rent, utilities, and food (RUF). This will be done by increasing both the PNA and the RUF by the percentage of the COLA increase.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted nor feasible because at a stakeholder meeting held on May 3, 2012, discussions among those in attendance on the distribution of yearly cost-of-living adjustments did not arrive at consensus. The Department did not feel further negotiations would result in an agreement or consensus on the issue.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Shannon Epperley at (208) 334-5969.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 29th day of August, 2012.

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](mailto:dhwrules@dhw.idaho.gov) e-mail

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**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 16-0305-1202**

**512. ROOM AND BOARD HOME ALLOWANCE.**

Room and board is a living arrangement where the participant purchases lodging (room) and meals (board) from a person he lives with who is not his parent, child or sibling. (3-30-07)

**01. Budgeted Room and Board Allowance.** Beginning January 1, 2006, a participant living in a room and board home is budgeted six hundred ninety-three dollars (\$693). Beginning ~~January 1, 2007~~ July 1, 2013, the Room and Board allowance will be adjusted annually by ~~eighty percent (80%)~~ the percentage of the annual cost-of-living increase in the federal SSI benefit rate for a single person. This adjustment will be effective on January 1st of each year. The room and board allowance increase will be rounded ~~up~~ to the next dollar. (~~3-30-07~~)(    )

**02. Basic Allowance for Participant in Room and Board Home.** A participant living in a room and board home is budgeted seventy-seven dollars (\$77) monthly as a basic allowance. Beginning ~~January 1, 2007~~ July 1, 2013, this basic allowance will be adjusted annually by ~~twenty percent (20%)~~ the percentage of the annual cost-of-living increase in the federal SSI benefit rate for a single person. This adjustment will be effective on January 1st of each year. The basic allowance increase will be rounded ~~down~~ to the nearest dollar. (~~3-30-07~~)(    )

**513. RESIDENTIAL CARE OR ASSISTED LIVING FACILITY AND CERTIFIED FAMILY HOME ALLOWANCES.**

A participant living in a Residential Care or Assisted Living Facility (RALF), in accordance with IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho," or a Certified Family Home (CFH), in accordance with IDAPA 16.03.19, "Rules Governing Certified Family Homes," is budgeted a basic allowance of seventy-seven dollars (\$77) monthly. Beginning ~~January 1, 2007~~ July 1, 2013, this basic allowance will be adjusted annually by ~~twenty percent (20%)~~ the percentage of the annual cost-of-living increase in the federal SSI benefit rate for a single person. This adjustment will be effective on January 1st of each year. The basic allowance increase will be rounded ~~down~~ to the nearest dollar. (~~3-30-07~~)(    )

**01. Budgeted Monthly Allowance Based On Level of Care.** A participant is budgeted a monthly allowance for care based on the level of care received as described in Section 515 of these rules. If the participant does not require State Plan Personal Care Services (PCS), his eligibility and allowances are based on the Room and Board rate in Section 512 of these rules. (4-7-11)

**02. Care Levels and Monthly Allowances.** Beginning January 1, 2006, care levels and monthly allowances are those listed in Table 513.02 of these rules. Beginning ~~January 1, 2007~~ July 1, 2013, the RALF and CFH allowances for participants living in a RALF or CFH on State Plan PCS will be adjusted annually by ~~eighty percent (80%)~~ the percentage of the annual cost-of-living increase in the federal SSI benefit rate for a single person. This adjustment will be effective on January 1st of each year. This increase will be rounded ~~up~~ to the next dollar.

**02. Care Levels and Monthly Allowances.** Beginning January 1, 2006, care levels and monthly allowances are those listed in Table 513.02 of these rules. Beginning ~~January 1, 2007~~ July 1, 2013, the RALF and CFH allowances for participants living in a RALF or CFH on State Plan PCS will be adjusted annually by ~~eighty percent (80%)~~ the percentage of the annual cost-of-living increase in the federal SSI benefit rate for a single person. This adjustment will be effective on January 1st of each year. This increase will be rounded ~~up~~ to the next dollar.

TABLE 513.02 - STATE PLAN PCS CARE LEVELS AND ALLOWANCES AS OF 1-1-06		
	Level of Care	Monthly Allowance
a.	Level I	Eight hundred and thirty-five dollars (\$835)
b.	Level II	Nine hundred and two dollars (\$902)
c.	Level III	Nine hundred and sixty-nine dollars (\$969)

(3-30-07)( )

**03. CFH Operated by Relative.** A participant living in a Certified Family Home (CFH) operated by his parent, child or sibling is not entitled to the CFH State Plan PCS allowances. He may receive the allowance for a person living with a relative as described in Section 501 of these rules. A relative for this purpose is the participant's parent, child, sibling, aunt, uncle, cousin, niece, nephew, grandparent or grandchild by birth, marriage, or adoption.

(3-30-07)

# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.03.09 - MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-1205

### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202, 56-203, 56-250 through 56-257, 56-260 through 56-266, Idaho Code.

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

**Tuesday - October 23, 2012 - 2:00 p.m. MDT**

**Medicaid Central Office  
Conference Room D-East and D-West  
3232 Elder Street  
Boise, ID 83705**

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

The rule amendments in this docket are being made to address the Governor's medical home initiative that has been developed over the past two years to provide better coordination of care for eligible individuals with chronic diseases and for covered services needed. The Idaho Medicaid Health Home is Medicaid's response to a multi-payer collaborative initiative in an effort to reduce ER visits, hospital admits, and prevention of co-morbid conditions. These rules implement a patient-centered medical home model of care that will coexist with the primary care case management structure called Healthy Connections.

These changes provide for the administration of the Idaho Medicaid Health Home program, which includes Home Health Services, definitions, participant eligibility including coverage and limitations, provider qualifications, procedural requirements, reimbursement structure, and quality assurance. In addition, the Healthy Connections program structure and rules have been revised and updated to describe the relationship between the Health Home program and the Healthy Connections program.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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:

No fiscal impact to the state general fund is expected as anticipated savings from better coordination of care and reduction in service utilization will offset any additional costs.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not initiated or feasible since the changes in this rulemaking are based on a collaborative group of stakeholders set up by the Governor for the medical home initiative. There has been extensive participation in these meetings and input has been provided on the Idaho Medicaid Health Home program.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cindy Brock at (208) 364-1983.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 31st day of August, 2012.

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

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0309-1205**

**399. COVERED SERVICES UNDER BASIC PLAN BENEFITS.**

Individuals who are eligible for Medicaid Basic Plan Benefits are eligible for the following benefits, subject to the coverage limitations contained in these rules. Those individuals eligible for services under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," are also eligible for the services covered under this chapter of rules, unless specifically exempted. (5-8-09)

**01. Hospital Services.** The range of hospital services covered is described in Sections 400 through 449 of these rules. (5-8-09)

**a.** Inpatient Hospital Services are described in Sections 400 through 406. (3-30-07)

**b.** Outpatient Hospital Services are described in Sections 410 through 416. (3-30-07)

**c.** Reconstructive Surgery services are described in Sections 420 through 426. (3-30-07)

**d.** Surgical procedures for weight loss are described in Sections 430 through 436. (3-30-07)

**e.** Investigational procedures or treatments are described in Sections 440 through 446. (3-30-07)

**02. Ambulatory Surgical Centers.** Ambulatory Surgical Center services are described in Sections 450 through 499 of these rules. (5-8-09)

**03. Physician Services and Abortion Procedures.** Physician services and abortion procedures are described in Sections 500 through 519 of these rules. (5-8-09)

**a.** Physician services are described in Sections 500 through 506. (3-30-07)

**b.** Abortion procedures are described in Sections 510 through 516. (3-30-07)

**04. Other Practitioner Services.** Other practitioner services are described in Sections 520 through 559 of these rules. (5-8-09)

**a.** Midlevel practitioner services are described in Sections 520 through 526. (3-30-07)

**b.** Chiropractic services are described in Sections 530 through 536. (3-30-07)

- c. Podiatrist services are described in Sections 540 through 545. (3-29-12)
- d. Licensed midwife (LM) services are described in Sections 546 through 552. (3-29-12)
- e. Optometrist services are described in Sections 553 through 556. (3-29-12)
- 05. Primary Care Case Management.** Primary care case management services are described in Sections 560 through ~~567~~<sup>9</sup> of these rules. (5-8-09)
- a.** Healthy Connections services are described in Sections 560 through 566. ( )
- b.** Health Home services are described in Sections 570 through 576. ( )
- 06. Prevention Services.** The range of prevention services covered is described in Sections ~~578~~<sup>0</sup> through 649 of these rules. (~~5-8-09~~)( )
- ~~**a.** Health Risk Assessment services are described in Sections 570 through 576. (3-30-07)~~
- ba.** Child Wellness Services are described in Sections 580 through 586. (3-30-07)
- eb.** Adult Physical Services are described in Sections 590 through 596. (3-30-07)
- dc.** Screening mammography services are described in Sections 600 through 606. (3-30-07)
- ed.** Diagnostic Screening Clinic services are described in Sections 610 through 61~~64~~. (~~3-30-07~~)( )
- e.** Additional Assessment and Evaluation services are described in Section 615. ( )
- f.** Health Questionnaire Assessment is described in Section 618. ( )
- fg.** Preventive Health Assistance benefits are described in Sections 620 through 626. (5-8-09)
- gh.** Nutritional services are described in Sections 630 through 636. (3-30-07)
- hi.** Diabetes Education and Training services are described in Sections 640 through 646. (3-30-07)
- 07. Laboratory and Radiology Services.** Laboratory and radiology services are described in Sections 650 through 659 of these rules. (5-8-09)
- 08. Prescription Drugs.** Prescription drug services are described in Sections 660 through 679 of these rules. (5-8-09)
- 09. Family Planning.** Family planning services are described in Sections 680 through 689 of these rules. (5-8-09)
- 10. Substance Abuse Treatment Services.** Services for substance abuse treatment are described in Sections 690 through 699 of these rules. (5-8-09)
- 11. Mental Health Services.** The range of covered Mental Health services are described in Sections 700 through 719 of these rules. (5-8-09)
- a.** Inpatient Psychiatric Hospital services are described in Sections 700 through 706. (3-30-07)
- b.** Mental Health Clinic services are described in Sections 707 through 71~~89~~. (~~3-30-07~~)( )
- 12. Home Health Services.** Home health services are described in Sections 720 through 729 of these rules. (5-8-09)

- 13. Therapy Services.** Occupational therapy, physical therapy, and speech-language pathology services are described in Sections 730 through 739 of these rules. (5-8-09)
- 14. Audiology Services.** Audiology services are described in Sections 740 through 749 of these rules. (5-8-09)
- 15. Durable Medical Equipment and Supplies.** The range of covered durable medical equipment and supplies is described in Sections 750 through 779 of these rules. (5-8-09)
- a.** Durable Medical Equipment and supplies are described in Sections 750 through 756. (3-30-07)
- b.** Oxygen and related equipment and supplies are described in Sections 760 through 766. (3-30-07)
- c.** Prosthetic and orthotic services are described in Sections 770 through 776. (3-30-07)
- 16. Vision Services.** Vision services are described in Sections 780 through 789 of these rules. (5-8-09)
- 17. Dental Services.** The dental services covered under the Basic Plan are covered under a selective contract as described in Section 800 through 819 of these rules. (3-29-12)
- 18. Essential Providers.** The range of covered essential services is described in Sections 820 through 859 of these rules. (5-8-09)
- a.** Rural health clinic services are described in Sections 820 through 826. (3-30-07)
- b.** Federally Qualified Health Center services are described in Sections 830 through 836. (3-30-07)
- c.** Indian Health Services Clinic services are described in Sections 840 through 846. (3-30-07)
- d.** School-Based services are described in Sections 850 through 856. (3-30-07)
- 19. Transportation.** The range of covered transportation services is described in Sections 860 through 879 of these rules. (5-8-09)
- a.** Emergency transportation services are described in Sections 860 through 866. (3-30-07)
- b.** Non-emergency medical transportation services are described in Sections 870 through 876. ~~(3-30-07)~~( )
- 20. EPSDT Services.** EPSDT services are described in Sections 880 through 889 of these rules. (5-8-09)
- 21. Specific Pregnancy-Related Services.** Specific pregnancy-related services are described in Sections 890 through 899 of these rules. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**413. OUTPATIENT HOSPITAL SERVICES: PROCEDURAL REQUIREMENTS.**

**01. Review Prior to Delivery of Outpatient Services.** Failure to obtain a timely review from the Department or its quality improvement organization (QIO) prior to delivery of outpatient services, listed on the select procedure and diagnosis list in the QIO Idaho Medicaid Providers Manual and the Hospital Provider Handbook, as amended, for participants who are eligible at the time of service, will result in a retrospective review. The Department

will assess a late review penalty, as outlined in Subsection 405.05 of these rules, when a review is conducted due to an untimely request. (3-30-07)( )

02. Follow-Up for Emergency Room Patients with Chronic Conditions. Hospitals must establish procedures to refer Medicaid participants with targeted chronic diseases defined in Section 560 of these rules to an Idaho Medicaid Health Home provider, if one is available within a reasonable distance of the participant's residence. Hospitals must coordinate care of patients who already have a Health Home provider with that PCP. ( )

(BREAK IN CONTINUITY OF SECTIONS)

SUB AREA: PRIMARY CARE CASE MANAGEMENT  
(Sections 560 -- 567)

**560. HEALTHY CONNECTIONS AND IDAHO MEDICAID HEALTH HOME: DEFINITIONS.**  
For purposes of this Sub Area that includes Sections 560 through 579 of these rules, unless the context clearly requires otherwise, the following words and terms have the following meanings and definitions apply: (3-30-07)( )

- 01. Best Practices Protocol.** A regimen of proven, effective and evidence-based practices. (4-2-08)
- 02. Care Plan.** A patient specific document that identifies health care orders for the patient and serves as a guide to care. It can either be written for an individual patient or be retrieved from a computer and individualized. ( )
- 03. Chronic Disease Management.** The process of applying best practices protocol to manage a chronic disease in order to produce the best health outcomes for a participant with the targeted chronic disease. (4-2-08)
- 04. Clinic.** Two (2) or more qualified medical professionals who provide services jointly through an organization for which an individual is given authority to act on its behalf. It also includes Federally Qualified Health Centers (FQHCs), Certified Rural Health Clinics, and Indian Health Clinics. (3-30-07)
- 05. Covered Services.** Those medical services and supplies for which reimbursement is available under the State Plan. (3-30-07)
- 06. Grievance.** The formal process by which problems and complaints related to Healthy Connections are addressed and resolved. Grievance decisions may be appealed as provided herein. (3-30-07)
- 07. Health Home.** A primary care provider organization contracted with Medicaid to lead a team approach for chronic disease management. The Health Home provides comprehensive patient centered care management and health promotion services to patients with chronic conditions in accordance with the requirements described in section 560 through 579 of these rules and Section 1945 of the Social Security Act. ( )
- 08. Health Information Technology.** Electronic tools utilized to securely exchange or manage health information between two or more entities. ( )
- 09. Healthy Connections.** The provision of health care services through a single point of entry for the purposes of managing participant care with an emphasis on preventative and primary care and reducing inappropriate utilization of services and resulting costs. This is sometimes referred to as managed care. Healthy Connections is a primary care case management model. (4-2-08)
- 10. Individual or Family Supports.** Community based social supports or recovery services available to assist individuals or families in need. ( )



**11. National Committee for Quality Assurance (NCOA). Accrediting organization which develops health care performance measurements and provides certifications of quality to health care providers. ( )**

~~07. Pay-for-Performance. The use of incentives to encourage and reinforce the delivery of evidence-based practices that promote better outcomes as efficiently as possible. (4-2-08)~~

**12. Preventive Care. Medical care that focuses on disease prevention and health maintenance. ( )**

~~08~~**13. Primary Care Case Management. The process in which a primary care provider is responsible for direct care of a participant, and for coordinating and controlling access to or initiating and/or supervising other health care services needed by the participant. (4-2-08)**

~~09~~**14. Primary Care Provider (PCP). A qualified medical professional who contracts with Medicaid to coordinate the care of certain participants enrolled in the Healthy Connections program. (4-2-08)( )**

~~10~~**5. Qualified Medical Professional. A duly licensed physician in the following specialties: Pediatrics, Internal Medicine, Family Practice, General Practice, General Surgery, Obstetrics/Gynecology, or a physician in any other specialty who chooses to assume the function of primary care case management. It also includes nurse practitioners, and physician assistants. Licenses must be held in the state(s) where services are being rendered. (3-30-07)**

**16. Quality Improvement Program. A program of organized, ongoing, and systematic efforts to improve and assess the quality of care within a primary care provider practice or organization. ( )**

**17. Quality Measures. A measure of health care performance based on specified dimensions of care and service. ( )**

~~18. Referral. The process by which A documented communication from a participant's primary care provider (PCP) to another Medicaid provider authorizing participants gain access to those specific covered services subject to primary care case management, ~~but that are~~ not provided by the ~~primary care provider~~ participant's PCP. # is the authorization for such services. (3-30-07)( )~~

**19. Risk Factor. A characteristic, condition, or behavior that increases the possibility of disease or injury. ( )**

~~120. Targeted Chronic Disease. One (1) of the diseases included in the chronic disease management pay-for-performance program. The specific targeted chronic diseases are diabetes, asthma, hypertension, hyperlipidemia, and depression. The Department may change the diseases included in the program after appropriate notification to PCPs. A disease identified by the Department for management under the Idaho Medicaid Health Home program. Specific conditions are identified in the Medicaid Provider Handbook available at www.idmedicaid.com. (4-2-08)( )~~

**21. Transitional Care. The care or services provided by a health care provider to ensure care of the patient as they move between health care settings or between healthcare providers. ( )**

## 561. HEALTHY CONNECTIONS: PARTICIPANT ELIGIBILITY.

~~01. Voluntary County. In a county where participation in Healthy Connections is voluntary, the participant will be given an opportunity to choose a PCP. If the participant is unable to choose a provider but wishes to participate, a provider will be assigned by the Department. If a voluntary county subsequently becomes a mandatory county, provider selection and assignment will remain unchanged where possible. (4-2-08)~~

~~021. Mandatory County. In a county where participation Primary Care Case Management Enrollment. Each participant in Idaho Medicaid is enrolled in Healthy Connections ~~is mandatory,~~ unless the participant is granted an exemption by the Department described in Subsections 561.02.a. through 561.02.h. of this rule. Each participant must choose a PCP within the Healthy Connections program. If a participant fails to choose a PCP, one will be assigned ~~if the participant fails to choose a participating provider after given the opportunity to do~~~~

~~so to the participant by the Department. Members Participants~~ of the same family ~~do not have to may~~ choose ~~the same different Healthy Connections~~ providers. ~~All participants in the county are required to participate unless individually granted an exception.~~ ( )

**02. Exceptions Exemption from Participation.** ~~An exemption~~ from participation in ~~a mandatory county are available~~ Healthy Connections may be granted on an individual basis by the Department for ~~a participant~~ who: ~~(4-2-08)( )~~

**a.** ~~Have to travel more than~~ Is unable to access a Healthy Connections provider within a distance of thirty (30) miles, or within thirty (30) minutes to obtain primary care services; ~~(3-30-07)( )~~

**b.** ~~Have~~s an eligibility period that is less than three (3) months; ~~(3-30-07)( )~~

**c.** ~~Have~~s an eligibility period that is only retroactive; ~~(3-30-07)( )~~

**d.** ~~Are~~ Is eligible only as ~~a~~ Qualified Medicare Beneficiary; ~~(3-30-07)( )~~

**e.** ~~Have~~s an existing relationship with a primary care physician or clinic who is not participating ~~with the in~~ Healthy Connections; ~~or~~ ~~(3-30-07)( )~~

**f.** ~~Has incompatible third party liability.~~ ~~(3-30-07)~~

**gf.** ~~Are~~ Is enrolled in the Medicare/Medicaid Coordinated Plan; ~~(4-2-08)( )~~

**g.** Resides in a nursing facility or an ICF/ID; or ( )

**h.** Resides in a county where there are not an adequate number of providers to deliver primary care case management services. ( )

## 562. HEALTHY CONNECTIONS: COVERAGE AND LIMITATIONS.

**01. Exempted Services.** All services are subject to primary care case management unless specifically exempted. The following services are exempt: (3-30-07)

**a.** Family planning services; (3-30-07)

**b.** Treatment for Emergency ~~care (as defined by the Department for the purpose of payment and performed in an emergency department)~~ medical conditions defined in Subsection 010.23 of these rules; and ~~(3-30-07)( )~~

**c.** Hospital admissions subsequent to an emergency room visit provided that the patient's discharge is coordinated with a PCP; ( )

**ed.** Dental care; (4-2-08)

**de.** Podiatry (performed in the office); (3-30-07)

**ef.** Audiology (hearing tests or screening, does not include ear/nose/throat services); (3-30-07)

**fg.** Optical/Ophthalmology/Optomtrist services (performed in the office); (3-30-07)

**gh.** Chiropractic (performed in the office); (3-30-07)

**hi.** Pharmacy (prescription drugs only); (3-30-07)

**ij.** Nursing home; (3-30-07)

- ~~j~~k. ICF/ID services; (3-30-07)
- ~~k~~l. Immunizations (not requiring an office visit); (4-2-08)
- ~~l~~m. Flu shots and/or pneumococcal vaccine (not requiring an office visit); (3-30-07)
- ~~m~~n. Diagnosis and/or treatment for sexually transmitted diseases; (3-30-07)
- ~~n~~o. One screening mammography per calendar year for women age forty (40) or older; (3-30-07)
- ~~o~~p. Indian Health Clinic/638 Clinic services provided to individuals eligible for Indian Health Services; (4-2-08)
- ~~p~~q. In-home services, known as Personal Care Services and Personal Care Services Case Management; (4-2-08)
- ~~q~~r. Laboratory services, including pathology; (4-2-08)
- ~~r~~s. Anesthesiology services; (3-29-12)
- ~~s~~t. Radiology services; ~~and~~ (3-29-12)( )
- ~~t~~u. Services rendered at an Urgent Care Clinic when the participant's PCP's office is closed; (3-29-12)( )
- ~~v~~. School-based services; ( )
- ~~w~~. Services managed directly by the Department, as defined in the provider handbook for those services at [www.idmedicaid.com](http://www.idmedicaid.com); and ( )
- ~~x~~. Pregnancy related services provided by an obstetrician or gynecologist not enrolled as a Healthy Connections provider. ( )

**02. Change in Services That Require a Referral.** The Department may change the services that require a referral after appropriate notification of Medicaid eligible individuals and providers. (3-30-07)

### 563. HEALTHY CONNECTIONS: PROCEDURAL REQUIREMENTS.

**01. Primary Care Case Management.** Under the Healthy Connections model of managed care, each participant obtains medical services through a PCP. This provider either provides the needed service, or makes a referral for needed services. This management function neither reduces nor expands the scope of covered services. (4-2-08)

**a.** Referrals. The primary care provider is responsible for making all reasonable efforts to monitor and manage the participant's care, providing primary care services, and making referrals for services when medically necessary. All services not specifically exempted in Section 562 of these rules require receipt of a referral prior to delivery of services. Services that require a referral, but are provided without a referral ~~will be~~ are not be paid covered. All referrals must be documented in the participant's patient record. (3-30-07)( )

**b.** Changing PCPs. If a participant is dissatisfied with his PCP, he may change providers effective the first day of any month by contacting his designated Healthy Connections Representative to do so no later than fifteen at least ten (150) days in advance prior to the end of the month. The change is effective the first day of the following month. This advance notice requirement may be waived by the Department. (4-2-08)( )

**c.** Changing Service Areas. ~~A P~~participants who moves from the area where ~~they are~~ he is enrolled must disenroll in the same manner as provided in the preceding paragraph for changing PCPs, and may obtain a referral from their PCP pending the transfer. Such referrals are valid not to exceed thirty (30) days contact his

~~designated Healthy Connections Representative to disenroll from his current PCP and enroll with a new PCP in the area where moving. Enrollment with the new PCP is effective the first day of the month following the request.~~

~~(4-2-08)( )~~

**02. Problem Resolution.** (3-30-07)

**a.** ~~Intent.~~ To help assure the success of Healthy Connections, the Department ~~intends to~~ provides a mechanism for timely and personal attention to problems and complaints related to the program. ~~(3-30-07)( )~~

**b.** ~~Local Program Representative.~~ To facilitate problem resolution, ~~each area~~ the Department will have a designated representative who will receive and attempt to resolve all complaints and problems related to the program and function as a liaison between participants and providers. It is anticipated that most problems and complaints will be resolved informally at this level. ~~(4-2-08)( )~~

**c.** ~~Registering a Complaint.~~ Both A participants ~~and or a providers~~ may register a complaint or notify the Department of a problem related to Healthy Connections either ~~by in~~ writing, electronically, or ~~by~~ telephoning to the ~~local program~~ designated representative. The ~~health~~ designated representative will attempt to resolve conflicts and disputes whenever possible and refer the complainant to alternative forums where appropriate. ~~(3-30-07)( )~~

**d.** ~~Grievance.~~ If a participant or provider is not satisfied with the resolution of a problem or complaint addressed by the ~~program~~ designated representative, he may file a formal grievance in writing to the representative. The manager of the managed care program may, where appropriate, refer the matter to a review committee designated by the Department to address issues such as quality of care or medical necessity. However, such decisions are not binding on the Department. The Department will respond in writing to grievances within thirty (30) days of receipt. ~~(3-30-07)( )~~

**e.** ~~Appeal.~~ Decisions in response to grievances may be appealed. Appeals ~~by participants~~ are ~~considered as fair hearings and appeals by providers as contested cases under the Rules Governing Contested Case Proceedings and Declaratory Rulings,~~ governed by the requirements of IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings," and must be filed ~~in accordance with~~ according to the provisions of that chapter. ~~(3-30-07)( )~~

~~**03. Chronic Disease Management Registration.** A participating PCP must initially register each participant eligible for chronic disease management reimbursement with the Department. (4-2-08)~~

~~**04. Chronic Disease Management Reporting.** A participating PCP must annually report on all identified quality indicators for each targeted chronic disease that he seeks reimbursement as specified in the provider agreement. The reporting schedule is established by the Department in the provider agreement. (4-2-08)~~

**564. HEALTHY CONNECTIONS: PROVIDER QUALIFICATIONS AND DUTIES.**

**01. Provider Participation Qualifications.** Primary care case management services may be provided by qualified medical professionals, licensed to practice in the state where services are being rendered. (3-30-07)

**02. Provider Participation Conditions and Restrictions.** (3-30-07)

**a.** Quality of Services. ~~Each P~~provider must: ( )

**i.** ~~m~~Maintain and provide services in accordance with community standards of care. ~~Provider must:~~ ( )

**ii.** ~~e~~Exercise his best efforts to effectively control utilization of services. ~~Providers must:~~ and ( )

**iii.** ~~p~~Provide twenty-four (24) hour coverage by telephone to assure participant access to services. ~~(3-30-07)( )~~

**b.** Provider Agreements. ~~Each P~~providers participating in primary care case management must:

- ( )
- ~~i.~~ ~~Sign an agreement. Clinics may sign an agreement on behalf of their qualified medical professionals.~~ ( )
- ~~ii.~~ ~~Enroll with the Department all primary care clinic locations as Healthy Connections service locations; and~~ ( )
- ~~iii.~~ ~~Providers participating in the chronic disease management pay for performance program must~~ Sign an addendum to the primary care case management provider agreement when participating in the Idaho Medicaid Health Home program. (4-2-08)( )
- c.** Patient Limits. ~~A P~~providers may limit the number of participants ~~they wish~~ to manage. Subject to this limit, the provider must accept all participants who either elect or are assigned to the provider, unless disenrolled in accordance with Subsection 564.02.d. of this rule. ~~A P~~providers may change the ~~#~~ participant limit effective the first day of any month. ~~by written request~~ The PCP must make the request in writing to the Department thirty (30) days prior to the effective date of the change. This advance notice ~~R~~requirement maybe waived by the Department. (3-30-07)( )
- d.** Disenrollment. ~~Instances may arise where~~ When the provider-patient relationship breaks down due to failure of the participant to follow the ~~plan of~~ care plan or for other reasons. ~~Accordingly,~~ a provider may choose to withdraw as the participant's primary care provider effective the first day of any month. ~~by written notice to~~ The PCP must notify in writing, both the participant and the Department thirty (30) days prior to the date of withdrawal. This advance notice requirement may be waived by the Department. (3-30-07)( )
- e.** Record Retention. Each Pproviders must: ( )
- ~~i.~~ ~~R~~etain patient and financial records and provide the Department access to those records for a minimum of six (6) years from the date of service. ( )
- ~~ii.~~ Upon the reassignment of a participant to another PCP, the provider must transfer (if a request is made) a copy of the patient's medical record to the new PCP. ~~Provider must also; and~~ ( )
- ~~iii.~~ ~~D~~isclose information required by Subsection 205.01 of these rules, when applicable. (4-2-08)( )
- f.** Termination or Amendment of Provider Agreements. The Department may terminate a provider's agreement as provided in Subsection 205.03 of these rules. An agreement may be amended for the same reasons. (3-30-07)

**565. HEALTHY CONNECTIONS: PROVIDER REIMBURSEMENT.**

- 01. Case Management Fee.** Reimbursement is as follows: (4-2-08)
- a.** ~~A PCP's will be is~~ paid a case management fee for primary care case management services based on the level of each participant's health care needs ~~and the PCP's availability.~~ (3-29-12)( )
- b.** ~~A PCP's~~ enrolled in the ~~chronic disease management pay for performance~~ Idaho Medicaid Health Home program ~~will be is~~ paid ~~an enhanced~~ chronic disease case management fee. (4-2-08)( )
- c.** The amount of the fee~~s~~ is determined by the Department. (3-29-12)( )
- d.** The amount of the fee is fixed and the same for all participating PCPs. (4-2-08)
- 02. Primary Care Case Management.** Reimbursement is based on: (3-29-12)
- a.** The number of participants enrolled ~~under~~ with the provider on the first day of each month

multiplied by the amount of the case management fee established for participants enrolled in the Basic Plan Benefit package; (3-29-12)( )

b. The number of participants enrolled ~~under~~ with the provider on the first day of each month, multiplied by the amount of the case management fee established for participants enrolled in the Enhanced Plan Benefit package; and (3-29-12)( )

c. ~~The amount of the case management fee is increased by fifty cents (\$.50) per participant~~ An incentive payment is added per participant to the primary care case management fee in Subsection 565.01.a. of this rule when the PCP's office offers extended hours of service in one (1) of the following ways: ( )

i. ~~The number of hours the PCP's office is available for delivery of service to participants equals to or exceeds~~ forty-six (46) hours per week. The amount of extended hours must be verified by and on file with the Department prior to an increase to the monthly case management fee-generation for the increase to be paid.; or (3-29-12)( )

ii. ~~The PCP has electronic health records available and accessible for delivery of services at a nearby service location that is within the same Healthy Connections provider organization and makes services available to the participant at lease forty-six (46) hours per week. The alternate location and extended hours must be verified by and on file with the Department prior to an increase to the monthly case management fee.~~ ( )

d. ~~The number of participants enrolled with an Idaho Medicaid Health Home provider on the first day of the month for services described in Section 572 these rules, multiplied by the case management fee established per participant enrolled in that program.~~ ( )

~~03. Chronic Disease Management. Reimbursement is based on:~~ (4-2-08)

~~a. The number of participants who have a targeted chronic disease multiplied by the amount of the enhanced case management fee for patient identification; and~~ (4-2-08)

~~b. The number of instances that the PCP achieved Department specified best practices protocol for the disease being managed multiplied by the amount of the enhanced case management fee for reported quality indicators.~~ (4-2-08)

**566. HEALTHY CONNECTIONS: QUALITY ASSURANCE.**

The Department will establish performance measurements to evaluate the effectiveness of ~~Chronic Disease Management~~ the primary care case management programs. The performance measurements will be reviewed at least annually and adjusted as necessary to provide quality assurance. (4-2-08)( )

567. -- 569. (RESERVED)

**SUB AREA: PREVENTION SERVICES**

(Sections 570 -- 649)

**[SECTION 570 MOVED TO SECTION 618]**

**570. IDAHO MEDICAID HEALTH HOME: DEFINITIONS.**

For purposes of the Idaho Medicaid Health Home program, the terms and definitions in Section 560 of these rules apply. ( )

**571. IDAHO MEDICAID HEALTH HOME: PARTICIPANT ELIGIBILITY.**

**01. Eligibility.** A Medicaid participant diagnosed with two (2) targeted chronic diseases, or one (1) targeted chronic disease and one (1) or more risk factors is eligible for enrollment in the Idaho Medicaid Health Home program. ( )

**02. Eligibility Determination.** A participant who meets the diagnostic criteria for health home eligibility is identified by the PCP to the Department. The Department will utilize claims data and other documentation as needed to verify the participant is eligible for Idaho Medicaid Health Home services. ( )

**572. IDAHO MEDICAID HEALTH HOME: COVERAGE AND LIMITATIONS.**

The following services are covered for an eligible participant assigned to a Health Home provider: ( )

**01. Comprehensive Care Management.** A Health Home provider must develop and implement a patient-centered care plan based on an individual's health risk assessment. The care plan must describe how the Health Home provider will coordinate clinical care with other providers as well as non-clinical health care related needs and services. ( )

**02. Care Coordination and Health Promotion.** A Health Home provider must: ( )

**a.** Coordinate the participant's care by sharing clinical information relevant to patient care with other providers: ( )

**b.** Provide educational information and information about health care resources to the participant: ( )

**c.** Have ongoing communication with the participant to encourage compliance with prescribed treatment; and ( )

**d.** Other activities necessary to facilitate improved health outcomes for the participant. ( )

**03. Comprehensive Transitional Care.** A Health Home provider must: ( )

**a.** Receive relevant medical information from and share relevant medical information with inpatient facilities to foster a coordinated approach to preventing avoidable readmissions; and ( )

**b.** Review and update care plans after unplanned admissions to adjust care coordination and management activities to address identifiable causes for the admission. ( )

**04. Individual, Family, Community, and Social Support Services.** A Health Home provider must: ( )

**a.** Coordinate care in a manner that effectively utilizes available individual and family supports to improve and maintain the health of the participant; and ( )

**b.** Provide information on available community and social support services that aid in promoting healthy behaviors and reducing physical and mental health risk factors. ( )

**573. IDAHO MEDICAID HEALTH HOME: PROCEDURAL REQUIREMENTS.**

**01. Provider Agreement.** A Health Home provider must sign an addendum to the primary care case management provider agreement which identifies the location of the Health Home and other requirements necessary to meet the Health Home service requirements in these rules. ( )

**02. Data Reporting.** Health Home providers must report data to the Department on a periodic basis in keeping with schedules outlined in the provider handbook and the terms of the Health Homes provider agreement. ( )

**03. Quality Improvement Program.** A provider must establish a continuous quality improvement program directed towards improving care for patients with chronic conditions. ( )

**574. IDAHO MEDICAID HEALTH HOME: PROVIDER QUALIFICATIONS AND DUTIES.**

**01. Provider Infrastructure and Health Home Assessment.** A prospective Health Home provider must complete a Health Home practice assessment in cooperation with the Department to determine the ability of the provider to provide the required services in keeping with a patient-centered medical home model. This assessment must demonstrate that the provider: ( )

**a.** Has identified the qualified medical professionals and other resources available to provide Health Home services: ( )

**b.** Has the ability to utilize health information technology to coordinate and facilitate communication of health information and to link to services: ( )

**c.** Is able to submit clinical and practice transformation data within six (6) months of the date the provider agreement is signed; and ( )

**d.** Has a chronic disease patient registry in place within three (3) months of the date the provider agreement is signed. ( )

**02. Qualifications.** An Idaho Medicaid Health Home provider must: ( )

**a.** Possess a current NCQA patient-centered medical home level one (1) certification, or demonstrate that the provider is actively pursuing that recognition. A provider that does not achieve this NCQA certification within two (2) years of the initiation date of their Idaho Medicaid Health Home provider agreement will be terminated as a Health Home provider for non-compliance with the provider agreement; ( )

**b.** Be enrolled as a Healthy Connections primary care provider (PCP); ( )

**c.** Sign an addendum to their primary care provider agreement which identifies the location of the enrolled site and indicates reporting schedule and quality measurement requirements; ( )

**d.** Have qualified medical professionals, licensed to practice in the state where services are being rendered; and ( )

**e.** Maintain office hours that allow enhanced access to care as described in Section 565.02 of these rules. ( )

**03. Provider Duties.** A Health Home provider must provide or coordinate the following elements of Health Home services: ( )

**a.** Care Plan. Develop a patient-centered care plan for each participant that coordinates and integrates both clinical and non-clinical health care related needs and services; ( )

**b.** Chronic Disease Management. Provide access to chronic disease management, including self-management support to the participant and the participant's family; ( )

**c.** Individual, Family, and Community Supports. Facilitate access to individual, family, and community supports outlined in the provider's agreement. ( )

**d.** Mental Health & Substance Abuse Services. Facilitate access to mental health and substance abuse services. ( )

**e.** Preventive Care. Coordinate and provide access to preventive and health promotion services, including prevention of mental illness and substance abuse disorders. ( )

**f.** Quality Improvement Program. Establish a continuous quality improvement program and report on quality improvement measures outlined in the provider agreement. ( )

**g.** Quality of Services. Maintain and provide quality services for each Home Health participant.



( )

h. Transitional Care. Coordinate and provide access to comprehensive care management and transitional care from and to inpatient settings and from a pediatric to an adult system of health care. ( )

**575. (RESERVED)**

**576. IDAHO MEDICAID HEALTH HOME: QUALITY ASSURANCE.**

The Department will establish performance measurements to evaluate the effectiveness of the Idaho Medicaid Health Home program through the collection and reporting of quality measures as specified in Section 1945 of the Social Security Act. ( )

~~577.~~ -- 579. (RESERVED)

**SUB AREA: PREVENTION SERVICES**  
(Sections ~~578~~0 -- 649)

**(BREAK IN CONTINUITY OF SECTIONS)**

**616. -- ~~617.~~ (RESERVED)**

**~~570~~618. HEALTH QUESTIONNAIRE.**

The Health Questionnaire assesses the general health status and health behaviors of a participant. The information collected is used to provide customized health education to the participant. The Health Questionnaire is administered at initial program entry and at periodic intervals thereafter. Participant responses to the issues addressed in the Health Questionnaire may identify a participant's interest in the Preventive Health Assistance benefits described in Section 620 of these rules. (3-30-07)

**619. (RESERVED)**

# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.03.09 - MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-1206

### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202, 56-203, 56-250 through 56-257, 56-260 through 56-266, Idaho Code, Section 1905(r) of the Social Security Act, and 42 CFR Section 441.56.

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

**Monday - October 22, 2012 - 2:00 p.m. MDT**

**Medicaid Central Office  
Conference Room East  
3232 Elder Street  
Boise, ID 83705**

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

The Centers for Medicare and Medicaid Services (CMS) provided guidance regarding the federal requirements for EPSDT coverage based on its review of Idaho's Medicaid Early Periodic Screening Diagnosis and Treatment (EPSDT) program. This rule change reflects direction from CMS and adds a definition of medically necessary services for EPSDT.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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(2), Idaho Code, negotiated rulemaking was not conducted nor feasible because the changes are being made to align the state's rules with federal regulations.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cindy Brock at (208) 364-1983.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 29th day of August, 2012.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720

Boise, ID 83720-0036  
phone: (208) 334-5564  
fax: (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0309-1206

880. ~~(RESERVED)~~ EARLY PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT (EPSDT) SERVICES: DEFINITION.

Medically necessary services for eligible Medicaid participants under the age of twenty-one (21) are health care, diagnostic services, treatment, and other measures described in Section 1905(a) of the Social Security Act (SSA) necessary to correct or ameliorate defects, physical and mental illness, and conditions discovered by the screening services as defined in Section 1905(r) of the SSA, whether or not such services are covered under the State Plan. Services must be considered safe, effective, and meet acceptable standards of medical practice. ( )

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

**16.03.10 - MEDICAID ENHANCED PLAN BENEFITS**

**DOCKET NO. 16-0310-1201**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202, 56-203, 56-250 through 56-257, and 56-260 through 56-266, Idaho Code.

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

**Wednesday - October 24, 2012  
1:00 p.m. MDT**

**Medicaid Central Office  
Conference Room East  
3232 Elder Street  
Boise, ID 83705**

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 2012 Legislature requested the Department work with providers to determine an effective process for reporting and providing information in an effective manner for evaluation of provider rates of reimbursement set by Medicaid that is not already based on another established rate methodology. These proposed rules provide a process for providers to report costs incurred and for the Department to determine rates based on those reports.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

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

The changes in this rulemaking are meant to be budget neutral and have no fiscal impact to the state general fund.

**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 May 2, 2012, Idaho Administrative Bulletin, [Vol. 12-5, page 71](#).

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sheila Pugatch at (208) 364-1817.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 29th day of August, 2012.

Tamara Prisock  
DHW - Administrative Procedures Section

Boise, ID 83720-0036  
phone: (208) 334-5564

450 W. State Street - 10th Floor  
P.O. Box 83720

fax: (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0310-1201

**036. GENERAL REIMBURSEMENT.**

**01. Long-Term Care Facility Payment.** Long-term care facilities will be reimbursed the lower of their customary charges, their actual reasonable costs, or the standard costs for their class as set forth in the Provider Reimbursement Manual, but the upper limits for payment must not exceed the payment which would be determined as reasonable costs using the Title XVIII Medicare standards and principles. (3-19-07)

**02. Individual Provider Payment.** The Department will not pay the individual provider more than the lowest of: (3-19-07)

**a.** The provider's actual charge for service; or (3-19-07)

**b.** The maximum allowable charge for the service as established by the Department on its pricing file, if the service or item does not have a specific price on file, the provider must submit documentation to the Department and reimbursement will be based on the documentation; or (3-19-07)

**c.** The Medicaid upper limitation of payment on those services, minus the Medicare payment, where a participant is eligible for both Medicare and Medicaid. The Department will not reimburse providers an amount in excess of the amount allowed by Medicaid, minus the Medicare payment. (3-19-07)

~~**03. Payment for Therapy Services.** The fees for physical therapy, occupational therapy, and speech-language pathology services include the use of therapeutic equipment to provide the modality or therapy. No additional charge may be made to either the Medicaid program or the client for the use of such equipment. (4-2-08)~~

~~**037.—038. (RESERVED)**~~

**037. GENERAL REIMBURSEMENT: PARTICIPANT SERVICES.**

The Department will evaluate provider reimbursement rates that comply with 42 U.S.C. 1396a(a)(30)(A). This evaluation will assure payments are consistent with efficiency, economy, and quality of care and safeguards against unnecessary utilization of care and services. Reimbursements will be sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area. ( )

**01. Review Reimbursement Rates.** The Department will review provider reimbursement rates and conduct cost surveys when an access or quality indicator reflects a potential access or quality issue described in Subsections 037.02 and 037.03 of this rule. ( )

**02. Access.** The Department will review annual statewide and regional access reports by service type comparing the previous twelve (12) months to the base-line year of State Fiscal Year 2012. The following measures will be used to determine when there is potential for access issues. ( )

**a.** Compare the change in total number of provider locations for service type to the change in eligible participants; or ( )

**b.** When participant complaints and critical incidence logs reveal outcomes that identify access issues for a service type. ( )

**03. Quality.** The Department will review quality reports required by each program used to monitor for patterns indicating an emerging quality issue. ( )

**04. Cost Survey.** The Department will survey one hundred percent (100%) of providers. Cost surveys are unaudited, but providers that refuse or fail to respond to the periodic state surveys may be disenrolled as a Medicaid provider. The Department will derive reimbursement rates using direct care staff costs, employment related expenditures, program related costs, and indirect general and administrative costs in the reimbursement methodology, when these costs are incurred by a provider. The Department will conduct cost surveys customized for each of the services defined in Section 038 of these rules. ( )

**a.** Wage rates will be used in the reimbursement methodology when the expenditure is incurred by the provider type executing the program. Wages will be identified in the Bureau of Labor Statistics website at [www.bls.gov](http://www.bls.gov) when there is a comparable occupation title for the direct care staff. When there is no comparable occupation title for the direct care staff, then a weighted average hourly rate methodology will be used. ( )

**b.** For employer related expenditures: ( )

**i.** The Bureau of Labor Statistics's report for employer costs per hour worked for employee compensation and costs as a percent of total compensation for Mountain West Divisions will be used to determine the incurred employer related costs by each provider type. The website for access to this report is at [www.bls.gov](http://www.bls.gov). ( )

**ii.** The Internal Revenue Service employer cost for social security benefit and Medicare benefit will be used to determine the incurred employer related costs by provider type. The website for access to this information is at [www.irs.gov](http://www.irs.gov). ( )

**c.** Cost surveys to collect indirect general, administrative, and program related costs will be used when these expenditures are incurred by the provider type executing the program. The costs will be ranked by costs per provider, and the Medicaid cost used in the reimbursement rate methodology will be established at the seventy-fifth percentile in order to efficiently set a rate. ( )

**038. GENERAL REIMBURSEMENT: TYPES OF PARTICIPANT SERVICES.** ( )  
The following types of services are reimbursed as provided in Section 037 of these rules. ( )

**01. Payment for Enhanced Outpatient Mental Health Services.** The fees for outpatient mental health services described in Section 110 of these rules. ( )

**02. Psychosocial Rehabilitative Services (PSR).** The fees for psychosocial rehabilitative services (PSR) described in Section 120 of these rules. ( )

**03. Personal Care Services.** The fees for personal Care Services (PCS) described in Section 300 of these rules. ( )

**04. Aged and Disabled Waiver Services.** The fees for personal care services (PCS) described in Section 320 of these rules. ( )

**05. Children's Waiver Services.** The fees for children's waiver services described in Section 680 of these rules. ( )

**06. Adults with Developmental Disabilities Waiver Services.** The fees for adults with developmental disabilities waiver services described in Section 700 of these rules. ( )

**07. Service Coordination.** The fees for service coordination described in Section 720 of these rules. ( )

**08. Therapy Services.** The fees for physical therapy, occupational therapy, and speech-language pathology services described in Section 215 of these rules include the use of therapeutic equipment to provide the modality or therapy. No additional charge may be made to either the Medicaid program or the client for the use of

such equipment. ( )

(BREAK IN CONTINUITY OF SECTIONS)

307. PERSONAL CARE SERVICES: PROVIDER REIMBURSEMENT.

01. **Reimbursement Rate.** Personal assistance providers will be paid a uniform reimbursement rate for service as established by the Department ~~on an annual basis~~. Provider claims for payment will be submitted on claim forms provided or approved by the Department. Billing instructions will be provided by the Department. (3-21-12)( )

02. **Calculated Fee.** The fee calculated for personal care provider reimbursement includes a basic rate for services and mileage. No separate charges for mileage will be paid by the Department for non-medical transportation, unless approved by the ~~RMS Department or its contractor~~ under a Home and Community-Based Services (HCBS) waiver, or provider transportation to and from the participant's home. Fees will be calculated as provided in Subsections 307.03 through 307.07~~8~~ of ~~these~~ this rules. (3-19-07)( )

03. **Weighted Average Hourly Rates Methodology.** Annually Medicaid will conduct a poll of all Idaho nursing facilities and ICFs/ID, and establish the weighted average hourly rates (WAHR) for nursing facility industry employees in comparable positions (i.e. RN, QMRP, certified and non-certified nurse's aides) in Idaho to be used in calculating the reimbursement rate to be effective on July 1st of that year. (3-29-10)( )

04. **Payment for Personal Assistance Agency.** Payment for personal assistance agency services will be paid according to rates established by the Department. (3-4-11)( )

a. The Department will establish Personal Assistance Agency rates for personal assistance services based on the WAHR. ~~For State Fiscal Year 2012, this rate will only be adjusted if the prevailing hourly rate for comparable positions is less than the rate paid during State Fiscal Year 2011.~~

Personal Assistance Agencies	WAHR x supplemental component	=	\$ amount/hour
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(3-21-12)( )

b. ~~Beginning with State Fiscal Year 2013, every five (5) years the Department will conduct a survey of all Personal Assistance Agencies which requests the number of hours of all Direct Care Staff and the costs involved for all travel, administration, training, and all payroll taxes and fringe benefits. Based on the survey conducted, the~~ Department will calculate a supplemental component using costs reported for travel, administration, training, and all payroll taxes and fringe benefits. The survey data is the cost information collected during the prior State Fiscal Year. (3-21-12)( )

c. ~~Based on the survey conducted, provided that at least eighty five percent (85%) of all Personal Assistance Agencies respond, the Department will calculate a supplemental component using costs reported for travel, administration, training, and all payroll taxes and fringe benefits. The survey data is the cost information collected during the prior State Fiscal Year. If less than eighty five percent (85%) of all Personal Assistance Agencies respond, the rate will remain at the WAHR rate without the supplemental component.~~ The Department will survey one hundred percent (100%) of personal care service providers. Cost surveys are unaudited, but a provider that refuses or fails to respond to the periodic state surveys may be disenrolled as a Medicaid provider. The Department will derive reimbursement rates using direct care staff costs, employment related expenditures, program related costs, and indirect general and administrative costs in the reimbursement methodology, when these costs are incurred by a provider. (3-4-11)( )

05. **Payment Levels for Adults in Residential Care or Assisted Living Facilities or Certified Family Homes.** Adult participants living in Residential Care or Assisted Living Facilities (RCALF) or Certified Family Homes will receive personal care services at a rate based on their care level. Each level will convert to a

specific number of hours of personal care services. (3-19-07)

**a.** Reimbursement Level I -- One point twenty-five (1.25) hours of personal care services per day or eight point seventy-five (8.75) hours per week. (3-19-07)

**b.** Reimbursement Level II -- One point five (1.5) hours of personal care services per day or ten point five (10.5) hours per week. (3-19-07)

**c.** Reimbursement Level III -- Two point twenty-five (2.25) hours of personal care services per day or fifteen point seventy-five (15.75) hours per week. (3-19-07)

**d.** Reimbursement Level IV - One point seventy-nine (1.79) hours of personal care services per day or twelve point five (12.5) hours per week. This level will be assigned based on a documented diagnosis of mental illness, intellectual disability, or Alzheimer's disease. If an individual is assessed as Level III with a diagnosis of mental illness, intellectual disability, or Alzheimer's disease the provider reimbursement rate will be the higher amount as described in Subsection 307.05.c. of these rules. (3-19-07)

**06. Attending Physician Reimbursement Level.** The attending physician or authorized provider will be reimbursed for services provided using current payment levels and methodologies for other services provided to eligible participants. (3-19-07)

**07. Supervisory RN and QMRP Reimbursement Level.** The supervisory RN and QMRP will be reimbursed at a per visit amount established by the Department for supervisory visits. Participant evaluations and Care Plan Development will be reimbursed at a rate established by the Department, following authorization by the [RMS Department or its contractor.](#) (3-19-07)( )

**a.** The number of supervisory visits by the RN or QMRP to be conducted per calendar quarter will be approved as part of the PCS care plan by the [RMS Department or its contractor.](#) (3-19-07)( )

**b.** Additional evaluations or emergency visits in excess of those contained in the approved care plan will be authorized when needed by the [RMS Department or its contractor.](#) (3-19-07)( )

**08. Payment for PCS Family Alternate Care Home.** The Department will establish PCS Family Alternate Care Home rates for personal assistance services based on the WAHR. ~~Beginning with State Fiscal Year 2013, every five (5) years the Department will conduct a survey of all Personal Assistance Agency's which requests the number of hours of all Direct Care Staff and the indirect costs involved such as administration, and training.~~ Based on the survey conducted, the Department will calculate a supplemental component using costs reported for administration, and training. The survey data is the cost information collected during the prior State Fiscal Year.

PCS Family Alternate Care Home	Children's PCS Assessment Weekly Hours x (WAHR x supplemental component)	=	\$ amount/week
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(3-21-12)( )



**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

**16.03.10 - MEDICAID ENHANCED PLAN BENEFITS**

**DOCKET NO. 16-0310-1202**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is October 1, 2012.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202, 56-203, 56-250 through 56-257, and 56-260 through 56-266, Idaho Code.

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

**Thursday - October 18, 2012 - 5 p.m. MDT**

**DHW Region IV Office  
1720 N. Westgate Drive  
Suite A, Room 131  
Boise, ID 83704**

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

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

Medicaid's Adult Developmental Disabilities and Aged and Disabled Home and Community Based Services (HCBS) waivers (also known as 1915(c) waivers) expire on September 30, 2012. In order for Idaho to maintain waiver authority and offer waiver benefits, a new waiver application for each must be submitted to the Centers for Medicare and Medicaid Services (CMS) and be approved. As a result, these rule changes are needed to realign this chapter of rules with the waivers that are being updated and are effective October 1, 2012.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in order to comply with deadlines in amendments to governing law or federal programs:

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

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

This rulemaking has no anticipated fiscal impact to the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted on May 31, 2012. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 2, 2012, Idaho Administrative Bulletin, [Volume 12-5, page 72](#).

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Mark Wasserman at (208) 287-1156.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 10th day of September, 2012.

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

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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 16-0310-1202**

**009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.**

**01. Compliance With Department Criminal History Check.** Agencies must verify that individuals working in the area listed in Subsection 009.03 of these rules whom are employed or whom they contract have complied with the provisions in IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks."

(3-19-07)

**02. Additional Criminal Convictions.** Once an individual has received a criminal history clearance, any additional criminal convictions must be reported by the agency to the Department when the agency learns of the conviction.

(3-19-07)

**03. Providers Subject to Criminal History and Background Check Requirements.** The following providers are required to have a criminal history and background check:

(3-19-07)

**a.** Adult Day ~~Care~~ Health Providers. The criminal history and background check requirements applicable to providers of adult day ~~care~~ health as provided in Sections 329 and 705 of these rules.

~~(4-2-08)~~(10-1-12)T

**b.** Adult Residential Care Providers. The criminal history and background check requirements applicable to adult residential care providers as provided in Section 329 of these rules.

(4-2-08)

**c.** Attendant Care Providers. The criminal history and background check requirements applicable to attendant care providers as provided in Section 329 of these rules.

(4-2-08)

**d.** Behavior Consultation or Crisis Management Providers. The criminal history and background check requirements applicable to behavior consultation or crisis management providers as provided in Section ~~329~~ and 705 of these rules.

~~(4-2-08)~~(10-1-12)T

**e.** Certified Family Home Providers and All Adults in the Home. The criminal history and background check requirements applicable to certified family homes are found in Sections 305, 329 and 705 of these rules, and as provided in IDAPA 16.03.19, "Rules Governing Certified Family Homes."

(4-2-08)

**f.** Chore Services Providers. The criminal history and background check requirements applicable to chore services providers as provided in Sections 329 and 705 of these rules.

(4-2-08)

**g.** Crisis Intervention Providers. The criminal history and background check requirements applicable to crisis intervention providers as provided in Section 685 of these rules. (7-1-11)

**h.** Companion Services Providers. The criminal history and background check requirements applicable to companion services providers as provided in Section 329 of these rules. (4-2-08)

**i.** Day ~~Reh~~Habilitation Providers. The criminal history and background check requirements applicable to day ~~rehabilitation~~ providers as provided in Section 329 of these rules. ~~(4-2-08)~~(10-1-12)T

**j.** Developmental Disabilities Agencies (DDA). The criminal history and background check for DDA and staff as provided in IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)," Section 009. (7-1-11)

**k.** Homemaker Services Providers. The criminal history and background check requirements applicable to homemaker services providers as provided in Section 329 of these rules. (4-2-08)

**l.** Mental Health Clinics. The criminal history and background check requirements applicable to mental health clinic staff as provided in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 714. (3-19-07)

**m.** Personal Assistance Agencies Acting As Fiscal Intermediaries. The criminal history and background check requirements applicable to the staff of personal assistance agencies acting as fiscal intermediaries as provided in Subsection 329.02 of these rules. (3-19-07)

**n.** Personal Care Providers. The criminal history and background check requirements applicable to personal care providers as provided in Subsection 305.06 of these rules. (3-19-07)

~~**o.** Psychiatric Consultation Providers. The criminal history and background check requirements applicable to psychiatric consultation providers as provided in Section 329 of these rules. (4-2-08)~~

~~**po.** Psychosocial Rehabilitation Agencies. The criminal history and background check requirements applicable to psychosocial rehabilitation agency employees as provided in Subsection 130.02 of these rules. (3-19-07)~~

~~**q.** Residential Habilitation Providers. The criminal history and background check requirements applicable to residential habilitation providers as provided in Sections 329 and 705 of these rules, and IDAPA 16.04.17 "Rules Governing Residential Habilitation Agencies," Sections 202 and 301. (4-2-08)~~

~~**ru.** Respite Care Providers. The criminal history and background check requirements applicable to respite care providers as provided in Sections 329, 665, and 705 of these rules. (7-1-11)~~

~~**st.** Service Coordinators and Paraprofessionals. The criminal history and background check requirements applicable to service coordinators and paraprofessionals working for an agency as provided in Section 729 of these rules. (3-19-07)~~

~~**s.** Skilled Nursing Providers. The criminal history and background check requirements applicable to skilled nursing providers as provided in Sections 329 and 705 of these rules. (10-1-12)T~~

~~**t.** Supported Employment Providers. The criminal history and background check requirements applicable to supported employment providers as provided in Sections 329 and 705 of these rules. (4-2-08)~~

~~**uu.** Therapeutic Consultant. The criminal history and background check requirements applicable to therapeutic consultation providers as provided in Section 685 of these rules. (7-1-11)~~

**010. DEFINITIONS: A THROUGH D.**

For the purposes of these rules, the following terms are used as defined below: (3-19-07)

**01. Accrual Basis.** An accounting system based on the principle that revenues are recorded when they are earned; expenses are recorded in the period incurred. (3-19-07)

**02. Active Treatment.** Active treatment is the continuous participation, during all waking hours, by an individual in an aggressive, consistently implemented program of specialized and generic training, treatment, health and related services, and provided in accordance with a treatment plan developed by an interdisciplinary team and monitored by a Qualified Intellectual Disabilities Professional (QIDP) directed toward: the acquisition of the behaviors necessary for the resident to function with as much self-determination and independence as possible; or the prevention or deceleration of regression or loss of current functional status. (3-19-07)

**03. Activities of Daily Living (ADL).** The performance of basic self-care activities in meeting an individual's needs for sustaining him in a daily living environment, including, but not limited to, bathing, washing, dressing, toileting, grooming, eating, communication, continence, mobility, and associated tasks. (3-19-07)

**04. Allowable Cost.** Costs that are reimbursable, and sufficiently documented to meet the requirements of audit. (3-19-07)

**05. Amortization.** The systematic recognition of the declining utility value of certain assets, usually not owned by the organization or intangible in nature. (3-19-07)

**06. Appraisal.** The method of determining the value of property as determined by an American Institute of Real Estate Appraiser (MAI) appraisal. The appraisal must specifically identify the values of land, buildings, equipment, and goodwill. (3-19-07)

**07. Assets.** Economic resources of the provider recognized and measured in conformity with generally accepted accounting principles. (3-19-07)

**08. Attendant Care.** Services provided under a Medicaid Home and Community-Based Services waiver that involve personal and medically-oriented tasks dealing with the functional needs of the participants and accommodating the participant's needs for long-term maintenance, supportive care, or *instrumental* activities of daily living (*ADL*). These services may include personal assistance and medical tasks that can be done by unlicensed persons or delegated to unlicensed persons by a health care professional or the participant. Services are based on the person's abilities and limitations, regardless of age, medical diagnosis, or other category of disability. This assistance may take the form of hands-on assistance (actually performing a task for the person) or cuing to prompt the participant to perform a task. ~~(5-8-09)~~(10-1-12)T

**09. Audit.** An examination of provider records on the basis of which an opinion is expressed representing the compliance of a provider's financial statements and records with Medicaid law, regulations, and rules. (3-19-07)

**10. Auditor.** The individual or entity designated by the Department to conduct the audit of a provider's records. (3-19-07)

**11. Audit Reports.** (3-19-07)

**a.** Draft Audit Report. A preliminary report of the audit finding sent to the provider for the provider's review and comments. (3-19-07)

**b.** Final Audit Report. A final written report containing the results, findings, and recommendations, if any, from the audit of the provider, as approved by the Department. (3-19-07)

**c.** Interim Final Audit Report. A written report containing the results, findings, and recommendations, if any, from the audit of the provider, sent to the Department by the auditor. (3-19-07)

**12. Bad Debts.** Amounts due to provider as a result of services rendered, but which are considered uncollectible. (3-19-07)

**13. Bed-Weighted Median.** A numerical value determined by arraying the average per diem cost per bed of all facilities from high to low and identifying the bed at the point in the array at which half of the beds have

equal or higher per diem costs and half have equal or lower per diem costs. The identified bed is the median bed. The per diem cost of the median bed is the bed-weighted median. (3-19-07)

**14. Capitalize.** The practice of accumulating expenditures related to long-lived assets which will benefit later periods. (3-19-07)

**15. Case Mix Adjustment Factor.** The factor used to adjust a provider's direct care rate component for the difference in the average Medicaid acuity and the average nursing facility-wide acuity. The average Medicaid acuity is from the picture date immediately preceding the rate period. The average nursing facility-wide acuity is the average of the indexes that correspond to the cost reporting period. (3-19-07)

**16. Case Mix Index (CMI).** A numeric score assigned to each nursing facility resident, based on the resident's physical and mental condition, that projects the amount of relative resources needed to provide care to the resident. (3-19-07)

**a. Nursing Facility Wide Case Mix Index.** The average of the entire nursing facility's case mix indexes identified at each picture date during the cost reporting period. If case mix indexes are not available for applicable quarters due to lack of data, case mix indexes from available quarters will be used. (3-19-07)

**b. Medicaid Case Mix Index.** The average of the weighting factors assigned to each Medicaid resident in the facility on the picture date, based on their RUG classification. Medicaid or non-Medicaid status is based upon information contained in the MDS databases. To the extent that Medicaid identifiers are found to be incorrect, the Department may adjust the Medicaid case mix index and reestablish the reimbursement rate. (3-19-07)

**c. State-Wide Average Case Mix Index.** The simple average of all nursing facilities "facility wide" case mix indexes used in establishing the reimbursement limitation July 1st of each year. The state-wide case mix index will be calculated annually during each July 1st rate setting. (3-19-07)

**17. Certified Family Home.** A home certified by the Department to provide care to one (1) or two (2) adults, who are unable to reside on their own and require help with activities of daily living, protection and security, and need encouragement toward independence. (3-19-07)

**18. Chain Organization.** A proprietorship, partnership, or corporation that leases, manages, or owns two (2) or more facilities that are separately licensed. (3-19-07)

**19. Claim.** An itemized bill for services rendered to one (1) participant by a provider and submitted to the Department for payment. (3-19-07)

**20. Clinical Nurse Specialist.** A licensed professional nurse who meets all the applicable requirements to practice as clinical nurse specialist under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." (3-19-07)

**21. Common Ownership.** An individual, individuals, or other entities who have equity or ownership in two (2) or more organizations which conduct business transactions with each other. Common ownership exists if an individual or individuals possess significant ownership or equity in the provider and the institution or organization serving the provider. (3-19-07)

**22. Compensation.** The total of all remuneration received, including cash, expenses paid, salary advances, etc. (3-19-07)

**23. Control.** Control exists where an individual or an organization has the power, directly or indirectly, to significantly influence or direct the actions or policies of an organization or institution. (3-19-07)

**24. Cost Center.** A "collection point" for expenses incurred in the rendering of services, supplies, or materials that are related or so considered for cost-accounting purposes. (3-19-07)

**25. Cost Component.** The portion of the nursing facility's rate that is determined from a prior cost

report, including property rental rate. The cost component of a nursing facility's rate is established annually at July 1st of each year. (3-19-07)

**26. Cost Reimbursement System.** A method of fiscal administration of Title XIX and Title XXI which compensates the provider on the basis of expenses incurred. (3-19-07)

**27. Cost Report.** A fiscal year report of provider costs required by the Medicare program and any supplemental schedules required by the Department. (3-19-07)

**28. Cost Statements.** An itemization of costs and revenues, presented on the accrual basis, which is used to determine cost of care for facility services for a specified period of time. These statements are commonly called income statements. (3-19-07)

**29. Costs Related to Patient Care.** All necessary and proper costs which are appropriate and helpful in developing and maintaining the operation of patient care facilities and activities. Necessary and proper costs related to patient care are usually costs which are common and accepted occurrences in the field of the provider's activity. They include, but are not limited to, costs such as depreciation, interest expenses, nursing costs, maintenance costs, administrative costs, costs of employee pension plans, and normal standby costs. (3-19-07)

**30. Costs Not Related to Patient Care.** Costs which are not appropriate or necessary and proper in developing and maintaining the operation of patient care facilities and activities. Such costs are nonallowable in computing reimbursable costs. They include, for example, cost of meals sold to visitors or employees; cost of drugs sold to other than patients; cost of operation of a gift shop; and similar items. Travel and entertainment expenses are nonallowable unless it can be specifically shown that they relate to patient care and for the operation of the nursing facility. (3-19-07)

**31. Customary Charges.** Customary charges are the rates charged to Medicare participants and to patients liable for such charges, as reflected in the facility's records. Those charges are adjusted downward, when the provider does not impose such charges on most patients liable for payment on a charge basis or, when the provider fails to make reasonable collection efforts. The reasonable effort to collect such charges is the same effort necessary for Medicare reimbursement as is needed for unrecovered costs attributable to certain bad debt under PRM, Chapter 3, Sections 310 and 312. (3-19-07)

**32. Day Treatment Services.** Day treatment services are developmental services provided regularly during normal working hours on weekdays by, or on behalf of, the Intermediate Care Facility for Persons with Intellectual Disabilities (ICF/ID). However, day treatment services do not include recreational therapy, speech therapy, physical therapy, occupational therapy, or services paid for or required to be provided by a school or other entity. (3-19-07)

**33. Department.** The Idaho Department of Health and Welfare or a person authorized to act on behalf of the Department. (3-19-07)

**34. Depreciation.** The systematic distribution of the cost or other basis of tangible assets, less salvage, over the estimated life of the assets. (3-19-07)

**35. Developmental Disability (DD).** A developmental disability, as defined in Section 66-402, Idaho Code, means a chronic disability of a person which appears before the age of twenty-two (22) years of age; and (3-19-07)

**a.** Is attributable to an impairment, such as an intellectual disability, cerebral palsy, epilepsy, autism or other condition found to be closely related to or similar to one (1) of these impairments, which requires similar treatment or services or is attributable to dyslexia resulting from such impairments; (3-19-07)

**b.** Results in substantial functional limitations in three (3) or more of the following areas of major life activity; self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (3-19-07)

c. Reflects the need for a combination or sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and individually planned and coordinated. (3-19-07)

**36. Direct Care Costs.** Costs directly assigned to the nursing facility or allocated to the nursing facility through the Medicare cost finding principles and consisting of the following: (3-19-07)

a. Direct nursing salaries that include the salaries of professional nurses (RN), licensed professional nurses, certified nurse's aides, and unit clerks; (3-19-07)

b. Routine nursing supplies; (3-19-07)

c. Nursing administration; (3-19-07)

d. Direct portion of Medicaid related ancillary services; (3-19-07)

e. Social services; (3-19-07)

f. Raw food; (3-19-07)

g. Employee benefits associated with the direct salaries: and (3-19-07)

h. Medical waste disposal, for rates with effective dates beginning July 1, 2005. (3-19-07)

**37. Director.** The Director of the Department of Health and Welfare or his designee. (3-19-07)

**38. Durable Medical Equipment (DME).** Equipment other than prosthetics or orthotics which can withstand repeated use by one (1) or more individuals, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of an illness or injury, is appropriate for use in the home, and is reasonable and necessary for the treatment of an illness or injury for a Medicaid participant. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**321. AGED OR DISABLED WAIVER SERVICES: DEFINITIONS.**  
The following definitions apply to Sections 320 through 330 of these rules: (3-19-07)

**01. Uniform Assessment Instrument (UAI).** A set of standardized criteria adopted by the Department to assess functional and cognitive abilities. (3-19-07)

**02. Individual Service Plan.** A document ~~which that~~ outlines all services including ~~but not limited to, personal assistance services~~ **activities of daily living (ADL)** and instrumental activities of daily living (IADL), required to maintain the individual in his home and community. The plan is initially developed by the **RMS Department** or its contractor for services provided under the Home and Community-Based Services Waiver. This plan must be approved by the **RMS Department or its contractor**, and all Medicaid reimbursable services must be contained in the plan. (3-19-07)(10-1-12)T

**03. Personal Assistance Agency or Agency.** An entity that recruits, hires, fires, trains, supervises, schedules, oversees quality of work, takes responsibility for the care given, and provides payroll, including all required withholding for federal and state tax purposes, and benefits for care providers working for them. They also bill Medicaid for services provided by employees, and collect participant contribution. (3-19-07)

**04. Employer of Record.** An entity which bills for services, withholds required taxes, and conducts other administrative activities for a waiver program participant. Such an entity is also called a personal assistance agency functioning as a fiscal intermediary agency. (5-8-09)

**05. Employer of Fact.** A participant or representative of a participant who hires, fires, and directs the services delivered by a waiver program provider. This individual may be a family member. (3-19-07)

**06. Participant.** An aged or disabled individual who requires and receives services under the Home and Community-based Waiver program. (3-19-07)

**322. AGED OR DISABLED WAIVER SERVICES: ELIGIBILITY.**

The Department provides waiver services to eligible participants: to prevent unnecessary institutional placement; to provide for the greatest degree of independence possible; to enhance the quality of life; to encourage individual choice; and to achieve and maintain community integration. For a participant to be eligible, the Department must find that the participant: (3-19-07)

**01. Has a Disabling Condition.** Requires services due to a disabling condition which impairs their mental or physical function or independence; and (3-19-07)

**02. Safe in a Non-Institutional Setting.** Be capable of being maintained safely and effectively in a non-institutional setting; and (3-19-07)

**03. Requires Such Services.** Would, in the absence of such services, require the level of care provided in a Nursing Facility. (4-2-08)

**04. Functional Level for Adults.** Based on the results of the assessment, the level of impairment of the individual will be established by the Department or its contractor. In determining need for nursing facility care an adult must require the level of assistance listed in Subsections 322.04 through 322.07 of this rule, according to the formula described in Subsection 322.08 of this rule. ~~(4-2-08)~~(10-1-12)T

**05. Critical Indicator - 12 Points Each.** (4-2-08)

**a.** Total assistance with preparing or eating meals. (4-2-08)

**b.** Total or extensive assistance in toileting. (4-2-08)

**c.** Total or extensive assistance with medications which require decision making prior to taking, or assessment of efficacy after taking. (4-2-08)

**06. High Indicator - 6 Points Each.** (4-2-08)

**a.** Extensive assistance with preparing or eating meals. (4-2-08)

**b.** Total or extensive assistance with routine medications. (4-2-08)

**c.** Total, extensive or moderate assistance with transferring. (4-2-08)

**d.** Total or extensive assistance with mobility. (4-2-08)

**e.** Total or extensive assistance with personal hygiene. (4-2-08)

**f.** Total assistance with supervision from Section II of the Uniform Assessment Instrument (UAI). (4-2-08)

**07. Medium Indicator - 3 Points Each.** (4-2-08)

**a.** Moderate assistance with personal hygiene. (4-2-08)

**b.** Moderate assistance with preparing or eating meals. (4-2-08)



- c. Moderate assistance with mobility. (4-2-08)
- d. Moderate assistance with medications. (4-2-08)
- e. Moderate assistance with toileting. (4-2-08)
- f. Total, extensive, or moderate assistance with dressing. (4-2-08)
- g. Total, extensive or moderate assistance with bathing. (4-2-08)
- h. Extensive or moderate assistance with supervision from Section II No. 18 of the UAI. (4-2-08)

**08. Nursing Facility Level of Care, Adults.** In order to qualify for nursing facility level of care, the individual must score twelve (12) or more points in one (1) of the following ways. (4-2-08)

- a. One (1) or more critical indicators = Twelve (12) points. (4-2-08)
- b. Two (2) or more high indicators = Twelve (12) points. (4-2-08)
- c. One (1) high and two (2) medium indicators = Twelve (12) points. (4-2-08)
- d. Four (4) or more medium indicators = Twelve (12) points. (4-2-08)

**323. AGED OR DISABLED WAIVER SERVICES: PARTICIPANT ELIGIBILITY DETERMINATION.** Waiver eligibility will be determined by the [RMS Department or its contractor](#). The participant must be eligible for Medicaid as described in IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD)." In addition, waiver participants must meet the following requirements. ~~(3-19-07)~~(10-1-12)T

**01. Requirements for Determining Participant Eligibility.** The [RMS Department or its contractor](#) must determine that: ~~(3-19-07)~~(10-1-12)T

a. The participant would qualify for nursing facility level of care under Sections 222 and 223 of these rules, if the waiver services listed in Section 326 of these rules were not made available; and (3-19-07)

b. The participant could be safely and effectively maintained in the requested or chosen community residence with appropriate waiver services. This determination must be made by the [RMS Department or its contractor](#). Prior to any denial of services on this basis, the Department [or its contractor](#) must verify that services to correct the concerns of the team are not available. ~~(3-19-07)~~(10-1-12)T

c. The average daily cost of waiver services and other medical services to the participant would not exceed the average daily cost to Medicaid of nursing facility care. (3-19-07)

d. Following the approval by the [RMS Department or its contractor](#) for services under the waiver, the participant must receive and continue to receive a waiver service as described in these rules. A participant who does not use a waiver service for thirty (30) consecutive days will be terminated from the waiver program. ~~(3-19-07)~~(10-1-12)T

**02. Admission to a Nursing Facility.** A participant who is determined by the [RMS Department or its contractor](#) to be eligible for services under the waiver may elect to not utilize waiver services and may choose admission to a nursing facility. ~~(3-19-07)~~(10-1-12)T

**03. Redetermination Process.** Case Redetermination will be conducted by the [RMS Department](#) or its contractor. The redetermination process will verify that the participant continues to meet nursing facility level of care and the participant's continued need for waiver services. ~~(3-19-07)~~(10-1-12)T

(BREAK IN CONTINUITY OF SECTIONS)

326. AGED OR DISABLED WAIVER SERVICES: COVERAGE AND LIMITATIONS.

**01. Adult Day ~~Care~~ Health.** ~~Adult day care is a supervised, structured day program, outside the home of the participant, that may offer one (1) or more of a variety of social, recreational, health activities, supervision for safety, and assistance with activities of daily living.~~ Adult day health is a supervised, structured service generally furnished four (4) or more hours per day on a regularly scheduled basis, for one (1) or more days per week. It is provided outside the home of the participant in a non-institutional, community-based setting, and it encompasses health services, social services, recreation, supervision for safety, and assistance with activities of daily living needed to ensure the optimal functioning of the participant. Adult day health services provided under this waiver will not include room and board payments. (3-19-07)(10-1-12)T

**02. Adult Residential Care Services.** ~~Adult residential care services are those that~~ consist of a range of services provided in a ~~congregate~~ homelike, non-institutional setting that include residential care or assisted living facilities and certified family homes. Payment is not made for the cost of room and board, including the cost of building maintenance, upkeep and improvement. (10-1-12)T

**a.** Adult residential care services consist of a range of services provided in a congregate setting licensed in accordance with under IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho," that includes: (3-19-07)(10-1-12)T

- ~~a~~i.** Medication management; (3-19-07)
- ~~b~~ii.** Assistance with activities of daily living; (3-19-07)
- ~~c~~iii.** Meals, including special diets; (3-19-07)
- ~~d~~iv.** Housekeeping; (3-19-07)
- ~~e~~v.** Laundry; (3-19-07)
- ~~f~~vi.** Transportation; (3-19-07)
- ~~g~~vii.** Opportunities for socialization; (3-19-07)
- ~~h~~viii.** Recreation; and (3-19-07)
- ~~i~~ix.** Assistance with personal finances. (3-19-07)
- ~~j~~x.** Administrative oversight must be provided for all services provided or available in this setting. (3-19-07)
- ~~k~~xi.** A written individual service plan must be negotiated between the participant or his legal representative, and a facility representative. (3-19-07)

**b.** Adult residential care services also consist of a range of services provided in a setting licensed under IDAPA 16.03.19, "Rules Governing Certified Family Homes," that include: (10-1-12)T

- i.** Monitoring of medications management; (10-1-12)T
- ii.** Assistance with activities of daily living; (10-1-12)T
- iii.** Meals, including special diets; (10-1-12)T
- iv.** Housekeeping; (10-1-12)T

- v. Laundry; (10-1-12)T
- vi. Transportation; (10-1-12)T
- vii. Recreation; and (10-1-12)T
- viii. Assistance with personal finances. (10-1-12)T
- ix. Administrative oversight must be provided for all services provided or available in this setting. (10-1-12)T
- x. A written individual service plan must be negotiated between the participant or his legal representative, and a facility representative. (10-1-12)T

**03. ~~Assistive Technology~~ Specialized Medical Equipment and Supplies. ~~Assistive technology is any item, piece of equipment, or product system beyond the scope of the Medicaid State Plan, whether acquired off the shelf or customized, that is used to increase, maintain, or improve the functional capability of the participant. Assistive technology also includes items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment.~~ (3-19-07)(10-1-12)T**

- a. Specialized medical equipment and supplies include: (10-1-12)T**
  - i. Devices, controls, or appliances that enable a participant to increase his abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which he lives; and (10-1-12)T
  - ii. Items necessary for life support, ancillary supplies and equipment necessary for the proper functioning of such items, and durable and non-durable medical equipment not available under the Medicaid State Plan. (10-1-12)T
- b. Items reimbursed with waiver funds are in addition to any medical equipment and supplies furnished under the Medicaid State plan and exclude those items that are not of direct medical or remedial benefit to the participant. (10-1-12)T**

**04. ~~Assisted Non-Medical Transportation.~~ Non-medical transportation services, including escort to a person who has difficulties (physical or cognitive) using regular vehicular transportation. Such services are specified in the plan for services in order to enables a waiver participants to gain access to waiver and other community services and resources. (3-19-07)(10-1-12)T**

- a. Assisted Non-medical transportation service is offered in addition to medical transportation required in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," ~~Sections 860 through 876,~~ and will not replace it. (3-19-07)(10-1-12)T**
- b. Whenever possible, family, neighbors, friends, or community agencies who can provide this service without charge, or public transit providers will be utilized. (3-19-07)**

**05. Attendant Care. ~~Attendant care services are those s~~Services provided under a Medicaid Home and Community-Based Services waiver that involve personal and medically oriented tasks dealing with the functional needs of the participant and accommodating the participant's needs for long-term maintenance, supportive care, or activities of daily living (ADL). These services may include personal ~~care~~ assistance and medical tasks that can be done by unlicensed persons, or delegated to an unlicensed person by a licensed health care professional or the participant. ~~Services may occur in the participant's home, community, work, school or recreational settings~~ are based on the participant's abilities and limitations, regardless of age, medical diagnosis, or other category of disability. This assistance may take the form of hands-on assistance (actually performing a task for the person) or cuing to prompt the participant to perform a task. (3-30-07)(10-1-12)T**

~~a. To utilize the services of a Personal Assistance Agency acting as a fiscal intermediary, the participant family, or legal representative must be able and willing to assume responsibility for the direction of the participant's care and for personnel activities such as provider selection and supervision. If the participant, family, or legal representative is unable or unwilling to assume such responsibility, then an agency employee must be utilized.~~ (3-19-07)

~~b. The Department may require supervision by a health care professional if the required care is so complex that such supervision is necessary for health and safety.~~ (3-19-07)

**06. Chore Services.** Chore services include the following services provided in Subsection 326.06.a. and 326.06.b. of this rule when necessary to maintain the functional use of the home, or to provide a clean, sanitary, and safe environment: (3-19-07)(10-1-12)T

a. Intermittent Assistance may include the following. (3-19-07)(10-1-12)T

i. Yard maintenance; (3-19-07)

ii. Minor home repair; (3-19-07)

iii. Heavy housework; (3-19-07)

iv. Sidewalk maintenance; and (3-19-07)

v. Trash removal to assist the participant to remain in their home. (3-19-07)(10-1-12)T

b. Chore activities may include the following: (3-19-07)

i. Washing windows; (3-19-07)

ii. Moving heavy furniture; (3-19-07)

iii. Shoveling snow to provide safe access inside and outside the home; (3-19-07)

iv. Chopping wood when wood is the participant's primary source of heat; and (3-19-07)

v. Tacking down loose rugs and flooring. (3-19-07)

c. These services are only available when neither the participant, nor anyone else in the household is capable of performing or financially providing for them, and where no other relative, caretaker, giver, landlord, community volunteer, agency, or third-party payer is willing to provide them or is responsible for their provision. (3-19-07)(10-1-12)T

d. In the case of rental property, the landlord's responsibility ~~of the landlord, pursuant to~~ under the lease agreement, will be examined prior to any authorization of service. Chore services are limited to the services provided in a home rented or owned by the participant. (3-19-07)(10-1-12)T

**07. Adult Companion Services.** Companion services include non-medical care, supervision, and socialization provided to a functionally impaired adult. Companion services are in-home services to ensure the safety and well-being of a person who cannot be left alone because of frail health, a tendency to wander, inability to respond to emergency situations, or other conditions that would require a person on-site. The service provider, who may live with the participant, may provide voice cuing and occasional assistance with toileting, personal hygiene, dressing, and other activities of daily living. Providers may also perform light housekeeping tasks that are incidental to the care and supervision of the participant. However, the ~~major~~ primary responsibility is to provide companionship and be there in case they are needed. (3-19-07)(10-1-12)T

**08. Consultation.** Consultation services are services to a participant or family member. Services are provided by a Personal Assistance Agency to a participant or family member to increase their skills as an employer or

manager of their own care. Such services are directed at achieving the highest level of independence and self-reliance possible for the participant ~~and the participant's~~ family. Services ~~to the provider are for the purpose of~~ include consulting with the participant and family to gain a better understanding of the special needs of the participant and the role of the caregiver. (3-19-07)(10-1-12)T

**09. Dental Services.** Dental services include exams, radiographs, diagnostic and preventative services, basic restorations, periodontics, oral surgery, maxillofacial surgery, and adjunctive dental services. These services and the medically necessary dental benefits described in these rules are provided through the Idaho Smiles program. The State's Medicaid dental contract for the Idaho Smiles program includes the complete list of all dental services available to waiver participants. Waiver dental services are limited to participants who are past the month of their twenty-first birthdays. Waiver participants who are under age twenty-one (21) will continue to receive children's dental benefits under the State Plan. (7-1-12)T

**10. Home Delivered Meals.** Home delivered meals are Mmeals which that are designed delivered to the participant's home to promote adequate participant nutrition. ~~through the provision and home delivery of~~ One (1) to two (2) meals per day. ~~Home delivered meals are limited to~~ may be provided to a participants who: (3-19-07)(10-1-12)T

- a. Rents or owns ~~their own~~ a home; (3-19-07)(10-1-12)T
- b. ~~Are Is~~ alone for significant parts of the day; (3-19-07)(10-1-12)T
- c. ~~Have Has~~ no ~~regular~~ caretaker ~~giver~~ for extended periods of time; and (3-19-07)(10-1-12)T
- d. ~~Are Is~~ unable to prepare a balanced meal without assistance. (3-19-07)(10-1-12)T

**11. Homemaker Services.** ~~Assistance to the participant with light housekeeping.~~ Homemaker services consist of performing for the participant, or assisting him with, or both, the following tasks: laundry, ~~assistance with~~ essential errands, meal preparation, and other light routine housekeeping duties if there is no one else in the household capable of performing these tasks. (3-19-07)(10-1-12)T

**12. ~~Home Modifications~~ Environmental Accessibility Adaptations.** Environmental accessibility adaptations include Mminor housing adaptations that are necessary to enable the participant to function with greater independence in the home, or without which, the participant would require institutionalization or have a risk to health, welfare, or safety. Such adaptations may include: (3-19-07)(10-1-12)T

a. The installation of ramps and lifts, widening of doorways, modification of bathroom facilities, or installation of electric and plumbing systems which that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the waiver participant, but ~~with~~ must exclude those adaptations or improvements to the home which that are not of direct medical or remedial benefit to the participant, such as carpeting, roof repair, or central air conditioning. (3-19-07)(10-1-12)T

b. Unless otherwise authorized by the Department, ~~P~~permanent environmental modifications are limited to modifications to a home ~~owned by the participant or the participant's family and the home~~ that is the participant's principal residence, and is owned by the participant or the participant's non-paid family. (3-19-07)(10-1-12)T

c. ~~Portable or Non-Stationary Modifications.~~ Portable or non-stationary modifications may be made when such modifications can follow the participant to his next place of residence or be returned to the Department. (3-19-07)(10-1-12)T

**13. Personal Emergency Response System (PERS).** ~~A system which may be provided to monitor waiver participant safety or provide access to emergency crisis intervention for emotional, medical, or environmental emergencies through the provision of communication connection systems.~~ PERS is an electronic device that enables a waiver participant to secure help in an emergency. The participant may also wear a portable "help" button to allow for mobility. The system is connected to the participant's phone and programmed to signal a response center once a "help" button is activated. The response center is staffed by trained professionals. PERS are This service is limited to

participants who:

~~(3-19-07)~~(10-1-12)T

- a. Rent or own ~~their~~ a home, or live with unpaid ~~relatives~~ caregivers; ~~(3-19-07)~~(10-1-12)T
- b. Are alone for significant parts of the day; (3-19-07)
- c. Have no care~~taker~~giver for extended periods of time; and ~~(3-19-07)~~(10-1-12)T
- d. Would otherwise require extensive, routine supervision. (3-19-07)

~~14. **Psychiatric Consultation.** Psychiatric Consultation is direct consultation and clinical evaluation of participants, who are currently experiencing or may be expected to experience a psychological, behavioral, or emotional crisis. This service may provide training to the direct service provider or participant's family related to the needs of a participant. These services also provide emergency intervention involving the direct support of the participant in crisis. (3-19-07)~~

**154. Respite Care.** Occasional Respite care includes short-term breaks from care giving responsibilities to non-paid caregivers. The caregiver or participant is responsible for selecting, training, and directing the provider. While receiving respite care services, the waiver participant cannot receive other waiver services which that are duplicative in nature. Respite care services provided under this waiver will do not include room and board payments. Respite care services may be provided in the participant's residence, a Certified Family Home, a Developmental Disabilities Agency, a Residential Assisted Living Facility, or an Adult day health facility. ~~(3-19-07)~~(10-1-12)T

**165. Skilled Nursing Services.** Skilled nursing includes ~~f~~ intermittent or continuous oversight, training, or skilled care which that is within the scope of the Nurse Practice Act, ~~and as s~~ Such care must be provided by a licensed registered nurse, or licensed practical nurse under the supervision of a registered nurse, licensed to practice in Idaho. These services are not appropriate if they are less cost effective than a Home Health visit. Nursing services may include but are not limited to: ~~(3-19-07)~~(10-1-12)T

~~a. The insertion and maintenance of nasogastric tubes and the monitoring or installation of feeding material; (3-19-07)~~

~~b. The maintenance of volume ventilators including associated tracheotomy care, tracheotomy, and oral pharyngeal suctioning. (3-19-07)~~

~~c. Maintenance and monitoring of IV fluids or nutritional supplements which are to be administered on a continuous or daily basis; (3-19-07)~~

~~d. Injections; (3-19-07)~~

~~e. Blood glucose monitoring; and (3-19-07)~~

~~f. Blood pressure monitoring. (3-19-07)~~

**176. Habilitation.** Habilitation services ~~consist of an integrated array of individually tailored services and supports furnished to eligible participants. These services and supports are designed to~~ assist the participants to reside ~~successfully in their own homes, with their families, or in alternate family homes~~ as independently as possible in the community, or maintain family unity. ~~(3-30-07)~~(10-1-12)T

a. Residential habilitation. Residential habilitation services ~~assist the individual to acquire, retain, or improve his ability to reside as independently as possible in the community or maintain family unity~~ consist of an integrated array of individually tailored services and supports furnished to eligible participants. Habilitation services include training in one (1) or more of the following areas These services and supports are designed to assist the participants to reside successfully in their own homes, with their families, or in certified family homes. The services and supports that may be furnished consist of the following: ~~(3-30-07)~~(10-1-12)T

i. Self-direction consists of identifying and responding to dangerous or threatening situations, making decisions and choices affecting the individual's life, and initiating changes in living arrangements or life activities; (3-30-07)

ii. Money management consists of training or assistance in handling personal finances, making purchases, and meeting personal financial obligations; (3-30-07)

iii. Daily living skills consist of training in accomplishing routine housekeeping tasks, meal preparation, dressing, personal hygiene, self-administration of medications, and other areas of daily living including proper use of adaptive and assistive devices, appliances, as well as following home safety, first aid, and emergency procedures; (3-30-07)

iv. Socialization consists of training or assistance in participation in general community activities and establishing relationships with peers with an emphasis on connecting the participant to his community. Socialization training associated with participation in community activities includes assisting the participant to identify activities of interest, working out arrangements to participate in such activities, and identifying specific training activities necessary to assist the participant to continue to participate in such activities on an on-going basis. Socialization training does not include participation in nontherapeutic activities that are merely diversional or recreational in nature; (3-30-07)

v. Mobility consists of training or assistance aimed at enhancing movement within the person's living arrangement, mastering the use of adaptive aids and equipment, accessing and using public transportation, independent travel, or movement within the community; or (3-30-07)

vi. Behavior shaping and management consist of training and assistance in appropriate expressions of emotions or desires, assertiveness, acquisition of socially appropriate behaviors, or extension of therapeutic services that consist of reinforcing physical, occupational, speech, and other therapeutic programs. (3-30-07)

vii. Personal assistance services necessary to assist the individual in daily living activities, household tasks, and such other routine activities as the person or the person's primary caregiver(s) are unable to accomplish on his or her own behalf. Personal assistance activities include direct assistance with grooming, bathing, and eating, assistance with medications that are ordinarily self-administered, supervision, communication assistance, reporting changes in the waiver participant's condition and needs, household tasks essential to health care at home to include general cleaning of the home, laundry, meal planning and preparation, shopping, and correspondence. (10-1-12)T

b. Day habilitation. Day ~~re~~habilitation consists of assistance with acquisition, retention, or improvement in self-help, socialization, and adaptive skills that take place in a non-residential setting, separate from the home or facility in which the participant resides. Services will normally be furnished four (4) or more hours per day on a regularly scheduled basis, for one (1) or more days per week, unless provided as an adjunct to other day activities included in a participant's plan of care. Day ~~re~~habilitation services will focus on enabling the participant to attain or maintain his or her maximum functional level and will be coordinated with any physical therapy, occupational therapy, or speech-language pathology services listed in the plan of care. In addition, day ~~re~~habilitation services may serve to reinforce skills or lessons taught in school, therapy, or other settings. ~~(4-2-08)~~(10-1-12)T

**187. Supported Employment.** Supported employment consists of competitive work in integrated work settings for individuals with the most severe disabilities for whom competitive employment has not traditionally occurred, or for whom competitive employment has been interrupted or intermittent as a result of a severe disability. Because of the nature and severity of their disability, these individuals need intensive supported employment services or extended services in order to perform such work. (3-30-07)

a. Supported employment services rendered under this waiver are not available under a program funded by either the Rehabilitation Act of 1973, as amended, or the Individuals with Disabilities Education Act (IDEA). Documentation must be maintained ~~by RMS~~ in the file of each individual receiving this service verifying that the service is not otherwise available or funded under the Rehabilitation Act of 1973, as amended, or the IDEA. ~~(3-30-07)~~(10-1-12)T

b. Federal Financial Participation (FFP) cannot be claimed for incentive payments, subsidies, or

unrelated vocational training expenses such as the following: incentive payments made to an employer of waiver participants to encourage or subsidize the employer's participation in a supported employment program, payments that are passed through to beneficiaries of a supported employment program, or payments for vocational training that is not directly related to a waiver participant's supported employment program. (3-30-07)(10-1-12)T

~~19. **Behavior Consultation or Crisis Management.** Behavior consultation or crisis management consists of services that provide direct consultation and clinical evaluation of participants who are currently experiencing, or are expected to experience, a psychological, behavioral, or emotional crisis. This service may provide training and staff development related to the needs of a participant. These services also include emergency back-up that provides direct support and services to a participant in crisis. (3-30-07)~~

(BREAK IN CONTINUITY OF SECTIONS)

328. AGED OR DISABLED WAIVER SERVICES: PROCEDURAL REQUIREMENTS.

01. **Role of the ~~Regional Medicaid Services~~ Department.** The ~~RMS Department or its contractor~~ will provide for the administration of the UAI, and the development of the initial individual service plan. This will be done either by ~~RMS Department~~ staff or a contractor. The ~~RMS Department or its contractor~~ will review and approve all individual service plans, and will authorize Medicaid payment by type, scope, and amount. (3-30-07)(10-1-12)T

a. Services ~~which that~~ are not in the individual service plan approved by the ~~RMS Department or its contractor~~ are not eligible for Medicaid payment. (3-19-07)(10-1-12)T

b. Services in excess of those in the approved individual service plan are not eligible for Medicaid payment. (3-19-07)

c. The earliest date that services may be approved by the ~~RMS Department or its contractor~~ for Medicaid payment is the date that the participant's individual service plan is signed by the participant or his designee. (3-19-07)(10-1-12)T

02. **Pre-Authorization Requirements.** All waiver services must be pre-authorized by the Department. Authorization will be based on the information from: (3-19-07)

a. The UAI; (3-19-07)

b. The individual service plan developed by the Department or its contractor; and (3-19-07)

c. Any other medical information which verifies the need for nursing facility services in the absence of the waiver services. (3-19-07)

03. **UAI Administration.** The UAI will be administered, and the initial individual service plan developed, by the ~~RMS Department~~ or its contractor. (3-19-07)(10-1-12)T

04. **Individual Service Plan.** All waiver services must be authorized by the ~~RMS Department or its contractor~~ in the Region where the participant will be residing and services provided based on a written individual service plan. (3-30-07)(10-1-12)T

a. The initial individual service plan is developed by the ~~RMS Department~~ or its contractor, based on the UAI, in conjunction with: (3-19-07)(10-1-12)T

i. The waiver participant (with efforts made by the ~~RMS Department or its contractor~~ to maximize the participant's involvement in the planning process by providing him with information and education regarding his rights); (3-30-07)(10-1-12)T



- ii. The guardian, when appropriate; (3-30-07)
  - iii. The supervising nurse or case manager, when appropriate; and (3-19-07)
  - iv. Others identified by the waiver participant. (3-19-07)
  - b.** The individual service plan must include the following: (3-19-07)
    - i. The specific type, amount, frequency, and duration of Medicaid reimbursed waiver services to be provided; (3-30-07)
    - ii. Supports and service needs that are to be met by the participant's family, friends, neighbors, volunteers, church, and other community services; (3-30-07)
    - iii. The providers of waiver services when known; (3-30-07)
    - iv. Documentation that the participant has been given a choice between waiver services and institutional placement; and (3-19-07)
    - v. The signature of the participant or his legal representative, agreeing to the plan. (3-19-07)
  - c.** The individual service plan must be revised and updated at least annually, based upon treatment results or a change in the participant's needs. (3-19-07)
  - d.** All services reimbursed under the Aged or Disabled Waiver must be authorized by the [RMS Department or its contractor](#) prior to the payment of services. ~~(3-19-07)~~(10-1-12)T
  - e.** The individual service plan, which includes all waiver services, is monitored by the Personal Assistance Agency, participant, family, and the [RMS Department](#) or its contractor. ~~(3-19-07)~~(10-1-12)T
- 05. Service Delivered Following a Written Plan of Care.** All services that are provided must be based on a written plan of care. (3-30-07)
- a.** The plan of care is developed by the plan of care team which includes: (3-30-07)
    - i. The waiver participant with efforts made to maximize his participation on the team by providing him with information and education regarding his rights; (3-30-07)
    - ii. The Department's administrative case manager; (3-30-07)
    - iii. The guardian when appropriate; (3-30-07)
    - iv. Service provider identified by the participant or guardian; and (3-30-07)
    - v. May include others identified by the waiver participant. (3-30-07)
  - b.** The plan of care must be based on an assessment process approved by the Department. (3-30-07)
  - c.** The plan of care must include the following: (3-30-07)
    - i. The specific types, amounts, frequency and duration of Medicaid reimbursed waiver services to be provided; (3-30-07)
    - ii. Supports and service needs that are to be met by the participant's family, friends and other community services; (3-30-07)
    - iii. The providers of waiver services; (3-30-07)

- iv. Goals to be addressed within the plan year; (3-30-07)
  - v. Activities to promote progress, maintain functional skills, or delay or prevent regression; and (3-30-07)
  - vi. The signature of the participant or his legal representative. (3-30-07)
  - d. The plan must be revised and updated by the plan of care team based upon treatment results or a change in the participant's needs. A new plan must be developed and approved annually. (3-30-07)
  - e. The Department's case manager monitors the plan of care and all waiver services. (3-30-07)
  - f. The plan of care may be adjusted during the year with an addendum to the plan. These adjustments must be based on changes in a participant's need or demonstrated outcomes. Additional assessments or information may be clinically necessary. Adjustment of the plan of care is subject to prior authorization by the Department. (3-30-07)
- 06. Provider Records.** Records will be maintained on each waiver participant. (3-19-07)
- a. Each service provider must document each visit made or service provided to the participant, and will record at a minimum the following information: (3-19-07)
    - i. Date and time of visit; (3-19-07)
    - ii. Services provided during the visit; (3-19-07)
    - iii. Provider observation of the participant's response to the service, if appropriate to the service provided, including any changes in the participant's condition; and (3-19-07)
    - iv. Length of visit, including time in and time out, if appropriate to the service provided. Unless the [RMS Department](#) or its contractor determines that the participant is unable to do so, the service delivery will be verified by the participant as evidenced by their signature on the service record. ~~(3-19-07)~~(10-1-12)T
  - b. The provider is required to keep the original service delivery record. A copy of the service delivery record will be maintained in the participant's living arrangement unless authorized to be kept elsewhere by the [RMS Department](#). Failure to maintain documentation according to these rules will result in the recoupment of funds paid for undocumented services. ~~(3-19-07)~~(10-1-12)T
  - c. The individual service plan initiated by the [RMS Department](#) or its contractor must specify which waiver services are required by the participant. The plan will contain all elements required by Subsection 328.04.a. of these rules and a copy of the most current individual service plan will be maintained in the participant's home and will be available to all service providers and the Department. A copy of the current individual service plan and UAI will be available from the [RMS Department or its contractor](#) to each individual service provider with a release of information signed by the participant or legal representative. ~~(3-19-07)~~(10-1-12)T
- 07. Provider Responsibility for Notification.** The service provider is responsible to notify the [RMS Department or its contractor](#), physician or authorized provider, or case manager, and family if applicable, when any significant changes in the participant's condition are noted during service delivery. Such notification will be documented in the service record. ~~(3-19-07)~~(10-1-12)T
- 08. Records Retention.** Personal Assistance Agencies, and other providers are responsible to retain their records for five (5) years following the date of service. (3-19-07)
- 09. Requirements for an Fiscal Intermediary (FI).** Participants of PCS will have one (1) year from the date which services begin in their geographic region to obtain the services of an FI and become an employee in fact or to use the services of an agency. Provider qualifications are in accordance with Section 329 of these rules.

(3-19-07)

**329. AGED OR DISABLED WAIVER SERVICES: PROVIDER QUALIFICATIONS AND DUTIES.**

Each provider must have a signed provider agreement with the Department for each of the services it provides.

(3-19-07)

**01. Employment Status.** Unless otherwise specified by the Department, each individual service provider must be an employee of record or fact of an agency. The Department may enter into provider agreements with individuals in situations in which no agency exists, or no fiscal intermediary agency is willing to provide services. Such agreements will be reviewed annually to verify whether coverage by a personal assistance agency or fiscal intermediary agency is still not available. (5-8-09)

**02. Fiscal Intermediary Services.** An agency that has responsibility for the following: (5-8-09)

**a.** To directly assure compliance with legal requirements related to employment of waiver service providers; (3-19-07)

**b.** To offer supportive services to enable participants or families consumers to perform the required employer tasks themselves; (3-19-07)

**c.** To bill the Medicaid program for services approved and authorized by the Department; (3-19-07)

**d.** To collect any participant participation due; (3-19-07)

**e.** To pay personal assistants and other waiver service providers for service; (3-19-07)

**f.** To perform all necessary withholding as required by state and federal labor and tax laws, rules and regulations; (3-19-07)

**g.** To assure that personal assistants providing services meet the standards and qualifications under in this rule; (5-8-09)

**h.** To maintain liability insurance coverage; (5-8-09)

**i.** To conduct, at least annually, participant satisfaction or quality control reviews that are available to the Department and the general public; (5-8-09)

**j.** To obtain such criminal background checks and health screens on new and existing employees of record and fact as required. (5-8-09)

**03. Provider Qualifications.** All providers of homemaker ~~services~~, respite care, adult day health, transportation, chore ~~services~~, companion ~~services~~, attendant ~~care~~, adult residential care, ~~and~~ home delivered meals, ~~and behavior consultants~~ must meet, either by formal training or demonstrated competency, the training requirements contained in the provider training matrix and the standards for direct care staff and allowable tasks or activities in the Department's ~~approved~~ Aged and Disabled waiver as approved by CMS. ~~(3-19-07)~~(10-1-12)T

**a.** A waiver provider cannot be a relative of any participant to whom the provider is supplying services. (3-19-07)

**b.** For the purposes of Section 329 of these rules, a relative is defined as a spouse or parent of a minor child. (3-19-07)

**c.** Individuals who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks," ~~including~~ ~~(4-2-08)~~(10-1-12)T

~~i.~~ *Companion services;* (4-2-08)

~~ii. Chore services; and (4-2-08)~~

~~iii. Respite care services. (4-2-08)~~

**04. Specialized Medical Equipment ~~Provider Qualifications~~ and Supplies.** Providers of specialized medical equipment and supplies must be enrolled in the Medicaid program as participating medical vendor providers. Providers must ensure all items meet applicable standards of manufacture, design and installation. Preference will be given to equipment and supplies that are the most cost-effective option to meet the participant's needs. ~~(3-19-07)(10-1-12)T~~

**05. Skilled Nursing Service ~~Provider Qualifications~~.** ~~Skilled N~~nursing ~~S~~service ~~P~~providers must be licensed in Idaho as an ~~R.N.~~ registered nurse or ~~L.P.N.~~ licensed practical nurse in Idaho good standing, or must be practicing on a federal reservation and be licensed in another state. Skilled nursing providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." ~~(3-19-07)(10-1-12)T~~

~~06. Psychiatric Consultation ~~Provider Qualifications~~. Psychiatric Consultation Providers must have: (3-19-07)~~

~~a. A master's degree in a behavioral science; (3-19-07)~~

~~b. Be licensed in accordance with state law and regulations; or (3-19-07)~~

~~c. A bachelor's degree and work for an agency with direct supervision from a licensed or Ph.D. psychologist and have one (1) year's experience in treating severe behavior problems. (4-2-08)~~

~~d. Psychiatric consultation providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)~~

**07. Consultation Services.** Consultation Sservices must be provided through a Personal Assistance Agency by a person who has demonstrated skills in training participants/family members in hiring, firing, training, and supervising their own care providers. ~~(3-19-07)(10-1-12)T~~

**08. Adult Residential Care ~~Providers~~.** Adult ~~R~~residential ~~C~~care providers will meet all applicable state laws and regulations. In addition, the provider must ensure that adequate staff are provided to meet the needs of the participants accepted for admission. Adult residential care providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.03.19, "Rules Governing Certified Family Homes," ~~and or~~ IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho." All providers of adult residential care must either own or lease the facility and comply with the Americans with Disabilities Act Accessibility Guidelines, 28 CFR Part 36, Appendix A. ~~(4-2-08)(10-1-12)T~~

**09. Home Delivered Meals.** Providers of home delivered meals must be a public agency or private business, and must ~~be capable of~~ exercise supervision to ensure that: ~~(3-19-07)(10-1-12)T~~

~~a. Supervising the direct service; (3-19-07)~~

~~b. Providing assurance that e~~Each meal meets one-third (1/3) of the Recommended Daily Allowance, as defined by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences; ~~(3-19-07)(10-1-12)T~~

~~eb. Meals are D~~delivered ~~ed the meals~~ in accordance with the service plan for care, in a sanitary manner, and at the correct temperature for the specific type of food; ~~(3-19-07)(10-1-12)T~~

~~dc. Maintaining d~~Documentation is maintained demonstrating that the meals served are made from the highest USDA grade for each specific food served; ~~and (3-19-07)(10-1-12)T~~

~~ed.~~ Being The agency or business is inspected and licensed as a food establishment by the district health department; ~~(3-19-07)~~(10-1-12)T

~~e.~~ A Registered Dietitian documents the review and approval of menus, menu cycles, and any changes or substitutions; and (10-1-12)T

~~f.~~ Either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule have been met. (10-1-12)T

~~102.~~ **Personal Emergency Response Systems.** Personal emergency response system ~~P~~providers must demonstrate that the devices installed in a waiver participant's home ~~s~~ meet Federal Communications Standards, or Underwriter's Laboratory Standards, or equivalent standards. ~~(3-19-07)~~(10-1-12)T

~~110.~~ **Adult Day Care Health.** ~~Facilities that p~~Providers of adult day care health must ~~be maintained in safe and sanitary manner.~~ meet the following requirements: ~~(3-30-07)~~(10-1-12)T

~~a.~~ Facilities will provide the necessary space and staff to meet the needs of the participants accepted by the provider. Supervision must be provided by the facility as necessary, to assure the safety and comfort of participants served. Services provided in a facility must be provided in a facility that meets the building and health standards identified in IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)." ~~(3-19-07)~~(10-1-12)T

~~b.~~ Providers who accept participants into their homes for services must maintain the homes in a safe and sanitary manner. Supervision must be provided by the provider as necessary to assure the safety and comfort of participants served. Services provided in a home must be provided in a home that meets the standards of home certification identified in IDAPA 16.03.19, "Rules Governing Certified Family Homes." ~~(3-30-07)~~(10-1-12)T

~~c.~~ Adult day care providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks History and Background Checks." Services provided in a residential adult living facility must be provided in a residential adult living facility that meets the standards identified in IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho." ~~(4-2-08)~~(10-1-12)T

~~d.~~ Adult day health providers who provide direct care or services must satisfactorily complete a criminal history check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (10-1-12)T

~~e.~~ Providers of adult day health must notify the Department on behalf of the participant, if the adult day health is provided in a Certified Family Home other than the participant's primary residence. The adult day health provider must provide care and supervision appropriate to the participant's needs as identified on the plan. (10-1-12)T

~~f.~~ Adult day health providers who provide direct care or services must be free from communicable disease. (10-1-12)T

~~g.~~ All providers of adult day health services must meet, either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule. (10-1-12)T

~~12.~~ ~~Assistive Technology~~ All items must meet applicable standards of manufacture, design and installation. The equipment must be the most cost effective to meet the participant's need. ~~(3-19-07)~~

~~131.~~ **Assisted Non-Medical Transportation Services.** ~~See Subsection 329.03 of this rule for provider qualifications.~~ Providers of non-medical transportation services must: ~~(3-19-07)~~(10-1-12)T

~~a.~~ Possess a valid driver's license; (10-1-12)T

**b.** Possess valid vehicle insurance; and (10-1-12)T

**c.** Meet, either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule. (10-1-12)T

**142.** **Attendant Care.** ~~See Subsection 329.03 of this rule for provider qualifications.~~ Attendant care providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." All providers of attendant care must meet, either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule. ~~(4-2-08)~~(10-1-12)T

**153.** **Homemaker Services.** The homemaker must be an employee of record or fact of an agency. Homemaker service providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." All providers of homemaker services must meet, either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule. ~~(4-2-08)~~(10-1-12)T

**164.** ~~Home Modifications~~ **Environmental Accessibility Adaptations.** All services must be provided in accordance with applicable state or local building codes and meet state or local building, plumbing, and electrical requirements for certification. ~~(3-19-07)~~(10-1-12)T

**175.** **Residential Habilitation Supported Living—~~Provider Qualifications.~~** When Rresidential habilitation ~~supported living~~ services ~~must be~~ are provided by an agency, ~~that is capable of~~ the agency must be certified by the Department as a residential habilitation agency under IDAPA 16.04.17, "Rules Governing Residential Habilitation Agencies," and supervise the direct services provided. Individuals who provide residential habilitation services in the home of the participant (supported living) must be employed by a residential habilitation agency. Providers of residential habilitation services must meet the following requirements: ~~(3-29-12)~~(10-1-12)T

- a.** Direct service staff must meet the following minimum qualifications: (3-30-07)
- i.** Be at least eighteen (18) years of age; (3-30-07)
  - ii.** Be a high school graduate, or have a GED, or demonstrate the ability to provide services according to a plan of ~~care~~ service; ~~(3-30-07)~~(10-1-12)T
  - iii.** Have current CPR and First Aid certifications; (3-30-07)
  - iv.** Be free from communicable diseases; ~~(3-30-07)~~(10-1-12)T
  - v.** Each staff person assisting with participant medications must successfully complete and follow the "Assistance with Medications" course available through the Idaho Professional Technical Education Program approved by the Idaho State Board of Nursing or other Department-approved training. (3-30-07)
  - vi.** Residential habilitation service providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks;" ~~(4-2-08)~~(10-1-12)T
  - vii.** Have appropriate certification or licensure if required to perform tasks which require certification or licensure. Direct service staff must also have taken a traumatic brain injury training course approved by the Department. (3-30-07)

**b.** The provider agency is responsible for providing direct service staff with a traumatic brain injury training course approved by the Department, and training specific to the needs of the participant. ~~Skill training may be~~

~~provided by a Program Coordinator who has demonstrated experience in writing skill training programs, if no agency is available in their geographic area as outlined in Subsection 329.18.c. of this rule. (3-30-07)(10-1-12)T~~

~~e. Residential habilitation providers who are unable to be employed by an agency because one is not available in their geographic area, must receive program development, implementation and oversight of service delivery services qualified by a program coordinator who is approved by the Department. (3-29-12)~~

**d.c.** Prior to delivering services to a participant, agency direct service staff must complete an orientation program. The orientation program must include the following subjects: (3-30-07)(10-1-12)T

- i. Purpose and philosophy of services; (3-30-07)
- ii. Service rules; (3-30-07)
- iii. Policies and procedures; (3-30-07)
- iv. Proper conduct in relating to waiver participants; (3-30-07)
- v. Handling of confidential and emergency situations that involve the waiver participant; (3-30-07)
- vi. Participant rights; (3-30-07)
- vii. Methods of supervising participants; (3-30-07)
- viii. Working with individuals with traumatic brain injuries; and (3-30-07)
- ix. Training specific to the needs of the participant. (3-30-07)

**d.d.** Additional training requirements must be completed within six (6) months of employment with the residential habilitation agency and include at a minimum: (3-29-12)

- i. Instructional techniques: Methodologies for training in a systematic and effective manner; (3-30-07)
- ii. Managing behaviors: Techniques and strategies for teaching adaptive behaviors; (3-30-07)
- iii. Feeding; (3-30-07)
- iv. Communication; (3-30-07)
- v. Mobility; (3-30-07)
- vi. Activities of daily living; (3-30-07)
- vii. Body mechanics and lifting techniques; (3-30-07)
- viii. Housekeeping techniques; and (3-30-07)
- ix. Maintenance of a clean, safe, and healthy environment. (3-30-07)

**d.e.** The provider agency will be responsible for providing on-going training specific to the needs of the participant as needed; ~~and~~ (3-30-07)(10-1-12)T

~~**18. Residential Habilitation Program Coordination for Certified Family Home Providers. When residential habilitation services are provided in the provider's home, the provider must meet the requirements in IDAPA 16.03.19, "Rules Governing Certified Family Homes" and must receive residential habilitation program coordination from a qualified program coordinator approved by the Department. Non-compliance with the**~~

~~certification process is cause for termination of the provider agreement or contract. (3-29-12)~~

**196.** ~~Day Rehabilitation-Provider Qualifications.~~ Providers of day ~~re~~habilitation services must have a minimum of two (2) years of experience working directly with persons with a traumatic brain injury, must provide documentation of standard licensing specific to their discipline, and must have taken a traumatic brain injury course approved by the Department. Day ~~re~~habilitation providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." ~~(4-2-08)~~(10-1-12)T

**17.** Respite Care. Providers of respite care services must meet the following minimum qualifications: (10-1-12)T

**a.** Have received care giving instructions in the needs of the person who will be provided the service; (10-1-12)T

**b.** Demonstrate the ability to provide services according to a plan of service; (10-1-12)T

**c.** Be free of communicable disease; and

**d.** Respite care service providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (10-1-12)T

**2018.** ~~Supported Employment-Service Providers.~~ Supported employment services must be provided by an agency ~~capable of that~~ supervises the direct service and ~~be is~~ accredited by the Commission on Accreditation of Rehabilitation Facilities; or other comparable standards; or meet State requirements to be a State-approved provider; ~~and have taken a traumatic brain injury training course approved by the Department.~~ Supported employment service providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." Providers must also take a traumatic brain injury training course approved by the Department. ~~(4-2-08)~~(10-1-12)T

~~**21-** Behavior Consultation or Crisis Management Service Providers. Behavior consultation or crisis management providers must meet the following:~~ (3-30-07)

~~**a.** Have a Master's Degree in a behavioral science such as social work, psychology, psychosocial rehabilitation counseling, psychiatric nursing, or a closely related course of study;~~ (3-30-07)

~~**b.** Be a licensed pharmacist; or~~ (3-30-07)

~~**c.** Work for a provider agency capable of supervising the direct service or work under the direct supervision of a licensed psychologist or Ph.D., with training and experience in treating severe behavior problems and training and experience in applied behavior analysis; and~~ (3-30-07)

~~**d.** Take a traumatic brain injury training course approved by the Department.~~ (3-30-07)

~~**e.** Emergency back-up providers must also meet the minimum provider qualifications under residential habilitation services.~~ (3-30-07)

~~**f.** Behavior consultation or crisis management service providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks."~~ (4-2-08)

**19.** Chore Services. Providers of chore services must meet the following minimum qualifications: (10-1-12)T

**a.** Be skilled in the type of service to be provided; and (10-1-12)T



**b.** Demonstrate the ability to provide services according to a plan of service. (10-1-12)T

**c.** Chore service providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (10-1-12)T

**d.** Meet, either by formal training or demonstrated competency, the training requirements in the Idaho provider training matrix and the standards for direct care staff in accordance with Subsection 329.03 of this rule. (10-1-12)T

**220. Dental Services.** Providers are credentialed by the contractor to ensure they meet the licensing requirements of the Idaho Board of Dentistry. Providers' duties are based on the contract requirements and are monitored and enforced by the contractor. (7-1-12)T

**330. AGED OR DISABLED WAIVER SERVICES: PROVIDER REIMBURSEMENT.**

The criteria used in reimbursing providers for waiver services are listed in Subsections 330.01 through 330.03 of these rules. (3-19-07)

**01. Fee for Services.** Waiver service providers will be paid on a fee for service basis as established by the Department, or as agreed upon by the Department's contractor and the provider, depending on the type of service provided. Adult residential care will be paid on a per diem basis, based on the number of hours and types of assistance required by the participant as identified in the UAI. ~~(3-19-07)~~(10-1-12)T

**02. Provider Claims.** Provider claims for payment will be submitted on claim forms provided or approved by the Department or its contractor. Billing instructions will be provided by the Department's payment system contractor. ~~(3-19-07)~~(10-1-12)T

**03. Calculation of Fees.** The fees calculated for waiver services include both services and mileage. No separate charges for mileage will be paid by the Department for provider transportation to and from the participant's home or other service delivery location when the participant is not being provided waiver or state plan transportation. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**703. ADULT DD WAIVER SERVICES: COVERAGE AND LIMITATIONS.**

**01. Residential Habilitation.** Residential habilitation services ~~which~~ consist of an integrated array of individually tailored services and supports furnished to eligible participants, ~~which~~ These services and supports are designed to assist the ~~m~~ participants to reside successfully in their own homes, with their families, or alternate in certified family homes. The services and supports that may be furnished consist of the following: ~~(3-19-07)~~(10-1-12)T

**a.** Habilitation services aimed at assisting the individual to acquire, retain, or improve his ability to reside as independently as possible in the community or maintain family unity. Habilitation services include training in one (1) or more of the following areas: (3-19-07)

**i.** Self-direction, including the identification of and response to dangerous or threatening situations, making decisions and choices affecting the individual's life, and initiating changes in living arrangements or life activities; (3-19-07)

**ii.** Money management including training or assistance in handling personal finances, making purchases, and meeting personal financial obligations; (3-19-07)

**iii.** Daily living skills including training in accomplishing routine housekeeping tasks, meal

preparation, dressing, personal hygiene, self-administration of medications, and other areas of daily living including proper use of adaptive and assistive devices, appliances, home safety, first aid, and emergency procedures; (3-19-07)

iv. Socialization including training or assistance in participation in general community activities and establishing relationships with peers with an emphasis on connecting the participant to his community. (Socialization training associated with participation in community activities includes assisting the participant to identify activities of interest, working out arrangements to participate in such activities and identifying specific training activities necessary to assist the participant to continue to participate in such activities on an on-going basis. Socialization training does not include participation in non-therapeutic activities which are merely diversional or recreational in nature); (3-19-07)

v. Mobility, including training or assistance aimed at enhancing movement within the person's living arrangement, mastering the use of adaptive aids and equipment, accessing and using public transportation, independent travel, or movement within the community; (3-19-07)

vi. Behavior shaping and management includes training and assistance in appropriate expressions of emotions or desires, assertiveness, acquisition of socially appropriate behaviors; or extension of therapeutic services, which consist of reinforcing physical, occupational, speech and other therapeutic programs. (3-19-07)

b. Personal Assistance Services necessary to assist the individual in daily living activities, household tasks, and such other routine activities as the participant or the participant's primary caregiver(s) are unable to accomplish on his own behalf. (3-19-07)

c. Skills training to teach waiver participants, family members, alternative family caregiver(s), or a participant's roommate or neighbor to perform activities with greater independence and to carry out or reinforce habilitation training. Services are focused on training and are not designed to provide substitute task performance. Skills training is provided to encourage and accelerate development in independent daily living skills, self-direction, money management, socialization, mobility and other therapeutic programs. (3-19-07)

**02. Chore Services.** ~~Chore services which are heavy household maintenance and minor home repairs include the following services when necessary to maintain the functional use of the home and or to provide a clean, sanitary, and safe environment: Chore activities include washing windows; moving heavy furniture and shoveling snow to provide safe access inside and outside the home; chopping wood when wood is the participant's primary source of heat; and tacking down loose rugs and flooring. These services are only available when neither the participant, nor anyone else in the household is capable of performing or financially providing for them, and where no other relative, caretaker, landlord, community volunteer/agency or third party payer is capable of or responsible for their provision. In the case of rental property, the responsibility of the landlord, pursuant to the lease agreement, will be examined prior to any authorization of service. Chore services are limited to the services provided in a home rented or owned by the participant.~~ (3-19-07)(10-1-12)T

- a. Intermittent Assistance may include the following:** (10-1-12)T
  - i. Yard maintenance:** (10-1-12)T
  - ii. Minor home repair:** (10-1-12)T
  - iii. Heavy housework:** (10-1-12)T
  - iv. Sidewalk maintenance; and** (10-1-12)T
  - v. Trash removal to assist the participant to remain in the home.** (10-1-12)T
- b. Chore activities may include the following:** (10-1-12)T
  - i. Washing windows:** (10-1-12)T
  - ii. Moving heavy furniture:** (10-1-12)T

- iii. Shoveling snow to provide safe access inside and outside the home; (10-1-12)T
- iv. Chopping wood when wood is the participant's primary source of heat; and (10-1-12)T
- v. Tacking down loose rugs and flooring. (10-1-12)T

c. These services are only available when neither the participant, nor anyone else in the household, is capable of performing or financially providing for them, and where no other relative, caregiver, landlord, community volunteer, agency, or third-party payer is willing to provide them, or is responsible for their provision. (10-1-12)T

d. In the case of rental property, the landlord's responsibility under the lease agreement will be examined prior to any authorization of service. Chore services are limited to the services provided in a home rented or owned by the participant. (10-1-12)T

**03. Respite Care.** Respite care includes short-term breaks from care giving responsibilities to non-paid caregivers. The caregiver or participant is responsible for selecting, training, and directing the provider. While receiving respite care services, the waiver participant cannot receive other services that are duplicative in nature. Respite care services provided under this waiver will do not include room and board payments. Respite care services are limited to participants who reside with non-paid caregivers. Respite care services may be provided in the participant's residence, the private home of the respite provider, the community, a Developmental Disabilities Agency, or an adult day health Facility. (3-19-07)(10-1-12)T

**04. Supported Employment.** Supported employment ~~which is~~ consists of competitive work in integrated work settings for individuals with the most severe disabilities for whom competitive employment has not traditionally occurred; or for whom competitive employment has been interrupted or intermittent as a result of a severe disability; ~~and who, b~~ Because of the nature and severity of their disability, these individuals need intensive supported employment services or extended services in order to perform such work. (3-19-07)(10-1-12)T

a. Supported employment services rendered under the waiver are not available under a program funded by either the Rehabilitation Act of 1973, as amended, or the Individuals with Disabilities Education Act (IDEA). Documentation ~~will~~ must be maintained in the file of each individual receiving this service verifying that the service is not otherwise available or funded under the Rehabilitation Act of 1973 as amended, or the IDEA. (3-19-07)(10-1-12)T

b. Federal Financial Participation (FFP) ~~will~~ can not be claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following: incentive payments made to an employer of waiver participants to encourage or subsidize the employers' participation in a supported employment program; payments that are passed through to beneficiaries of supported employment programs; or payments for vocational training that ~~is~~ are not directly related to a waiver participant's supported employment program. (3-19-07)(10-1-12)T

**05. Non-Medical Transportation.** ~~Transportation services which are services offered in order to~~ Non-medical transportation enables a waiver participants to gain access to waiver and other community services and resources ~~required by the plan of service.~~ (10-1-12)T

a. ~~This service~~ Non-medical transportation is offered in addition to medical transportation required under 42 CFR 440.431.53 and transportation services offered under the State Plan, defined at 42 CFR 440.170(a), and ~~must~~ in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," and will not replace ~~them~~ it. (10-1-12)T

b. Whenever possible, family, neighbors, friends, or community agencies ~~which~~ who can provide this service without charge or public transit providers will be utilized. (3-19-07)(10-1-12)T

**06. Environmental Accessibility Adaptations.** Environmental accessibility adaptations ~~which are those interior or exterior physical adaptations to the home, required by the waiver participant's plan of service, which are necessary to ensure the health, welfare, safety of the individual, or which~~ include minor housing adaptations that are necessary to enable the individual participant to function with greater independence in the home, ~~and~~ or without which, the ~~waiver~~ participant would require institutionalization or have a risk to health, welfare, or

safety. Such adaptations may include: (10-1-12)T

a. ~~The~~ installation of ramps and lifts, widening of doorways, modification of bathroom facilities, or installation of electric and plumbing systems ~~which that~~ are necessary to accommodate the medical equipment and supplies necessary for the welfare of the waiver participant, but must exclude those adaptations or improvements to the home ~~which that~~ are not of direct medical or remedial benefit to the participant, such as carpeting, roof repair, or central air conditioning. ~~All services must be provided in accordance with applicable State or local building codes.~~ (10-1-12)T

b. Unless otherwise authorized by the Department, ~~P~~permanent environmental modifications are limited ~~to modifications~~ to a home ~~rented or owned by the participant or the participant's family when the home that~~ is the participant's principal residence, and is owned by the participant or the participant's non-paid family. (10-1-12)T

c. Portable or non-stationary modifications may be made when such modifications can follow the participant to his next place of residence or be returned to the Department. (3-19-07)(10-1-12)T

**07. Specialized Medical Equipment and Supplies.** (10-1-12)T

a. Specialized medical equipment and supplies include: (10-1-12)T

i. ~~D~~Devices, controls, or appliances, ~~specified in the plan of service which that~~ enable a participants ~~to~~ increase ~~their his~~ abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which ~~they he~~ lives; and (10-1-12)T

ii. ~~They also include i~~Items necessary for life support, ancillary supplies and equipment necessary ~~to~~ for the proper functioning of such items, and durable and non-durable medical equipment not available under the Medicaid State Plan. (10-1-12)T

b. Items reimbursed with waiver funds ~~must be~~ are in addition to any medical equipment and supplies furnished under the Medicaid State Plan and ~~must~~ exclude those items ~~which that~~ are not of direct medical or remedial benefit to the participant. ~~All items must meet applicable standards of manufacture, design and installation.~~ (3-19-07)(10-1-12)T

**08. Personal Emergency Response System (PERS).** ~~Personal Emergency Response Systems (PERS) which is an electronic device that enables a waiver participant to secure help in an emergency, may be provided to monitor waiver participant safety or provide access to emergency crisis intervention for emotional, medical or environmental emergencies through the provision of communication connection systems. The participant may also wear a portable "help" button to allow for mobility. The system is connected to the participant's phone and programmed to signal a response center once a "help" button is activated. The response center is staffed by trained professionals. PERS are~~ This service is limited to participants who: (10-1-12)T

a. ~~R~~ent or own ~~their a~~ home, or live with unpaid caregivers; (10-1-12)T

b. ~~who a~~Are alone for significant parts of the day; (10-1-12)T

c. ~~h~~Have no ~~regular~~ caretaker ~~giver~~ for extended periods of time; and (10-1-12)T

d. ~~who w~~Would otherwise require extensive, routine supervision. (3-19-07)(10-1-12)T

**09. Home Delivered Meals.** Home delivered meals ~~which are meals that~~ are ~~designed~~ delivered to a participant's home to promote adequate ~~wavier~~ participant nutrition, ~~through the provision and home delivery of o~~One (1) to two (2) meals per day may be provided. ~~Home delivered meals are limited to a~~ participants who: (10-1-12)T

a. ~~R~~ents or owns ~~their own a~~ home; (10-1-12)T

b. ~~who are~~ Is alone for significant parts of the day; and (10-1-12)T

~~c. have~~ **Has** no ~~regular~~ **caretaker/giver** for extended periods of time; ~~and~~ (3-19-07)(10-1-12)T

~~d. Is unable to prepare a meal without assistance.~~ (10-1-12)T

**10. Skilled Nursing.** ~~Nursing services are those intermittent nursing services or private duty nursing services which provide individual and continuous care listed in the plan of service which are~~ **Skilled nursing includes intermittent or continuous oversight, training, or skilled care that is** within the scope of the Nurse Practice Act, ~~and are~~ **Such care must be** provided by a licensed ~~professional (RN) registered~~ nurse, or licensed practical nurse, ~~(LPN)~~ under the supervision of ~~an RN, registered nurse~~ licensed to practice in Idaho. (3-19-07)(10-1-12)T

**11. Behavior Consultation/Crisis Management.** Behavior Consultation/Crisis Management services which provide direct consultation and clinical evaluation of participants who are currently experiencing or may be expected to experience, a psychological, behavioral, or emotional crisis. This service may provide training and staff development related to the needs of a participant. These services also provide emergency back-up involving the direct support of the participant in crisis. (3-19-07)

**12. Adult Day Care Health.** ~~Adult day Care is a supervised, structured day program, outside the home of the participant that offer one (1) or more of a variety of social, recreational, health activities, supervision for safety, and assistance with activities of daily living. These activities need to be identified on the plan of service. Adult day health is a supervised, structured service generally furnished four (4) or more hours per day on a regularly scheduled basis, for one (1) or more days per week. It is provided outside the home of the participant in a non-institutional, community-based setting, and it encompasses health services, social services, recreation, supervision for safety, and assistance with activities of daily living needed to ensure the optimal functioning of the participant. Adult day health services provided under this waiver will not include room and board payments. Adult day Care health cannot exceed thirty (30) hours per week, either alone or in combination with developmental therapy, and occupational therapy, or IBI.~~ (3-19-07)(10-1-12)T

~~a. Services provided in a facility must meet the building and health standards identified in IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)."~~ (7-1-11)

~~b. Services provided in a home must meet the standards of home certification identified in IDAPA 16.03.19, "Rules Governing Certified Family Home," and health standards identified in IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)."~~ (7-1-11)

**13. Dental Services.** Dental services include exams radiographs, diagnostic and preventative services, basic restorations, periodontics, oral surgery, maxillofacial surgery, and adjunctive dental services. These services and the medically necessary dental benefits described in these rules are provided through the Idaho Smiles program. The State's Medicaid dental contract for the Idaho Smiles program includes the complete list of all dental services available to waiver participants. Waiver dental services are limited to participants who are past the month of their twenty-first birthdays. Waiver participants who are under age twenty-one (21) will continue to receive children's dental benefits under the State Plan. (7-1-12)T

**14. Self Directed Community Supports.** Participants eligible for the DD Waiver may choose to self-direct their individualized budget rather than receive the traditional waiver services described in this section of rule. The requirements for this option are outlined in IDAPA 16.03.13, "Consumer Directed Services." (3-19-07)

**15. Place of Service Delivery.** Waiver services may be provided in the participant's personal residence, a certified family home, day habilitation/supported employment program, or community. The following living situations are specifically excluded as a place of service for waiver services: (3-19-07)

**a.** Licensed skilled, or intermediate care facilities, certified nursing facility (NF) or hospital; and (3-19-07)

**b.** Licensed Intermediate Care Facility for Persons with Intellectual Disabilities (ICF/ID); and (3-19-07)

- c. Residential Care or Assisted Living Facility. (3-19-07)
- d. Additional limitations to specific services are listed under that service definition. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**705. ADULT DD WAIVER SERVICES: PROVIDER QUALIFICATIONS AND DUTIES.**

All providers of waiver services must have a valid provider agreement with the Department. Performance under this agreement will be monitored by the Department. (3-19-07)

**01. Residential Habilitation -- Supported Living.** When residential habilitation services are provided by an agency, the agency must be certified by the Department as a Residential Habilitation Agency under IDAPA 16.04.17, "Rules Governing Residential Habilitation Agencies," and must ~~be capable of~~ supervising the direct services provided. Individuals who provide residential habilitation services in the home of the participant (supported living) must be employed by a Residential Habilitation Agency. Providers of residential habilitation services must meet the following requirements: (3-29-12)

- a. Direct service staff must meet the following minimum qualifications: (3-19-07)
  - i. Be at least eighteen (18) years of age; (3-19-07)
  - ii. Be a high school graduate, or have a GED, or demonstrate the ability to provide services according to a ~~an~~ plan of service; ~~(3-19-07)~~ (10-1-12)T
  - iii. Have current CPR and First Aid certifications; (3-19-07)
  - iv. Be free from communicable diseases; ~~(3-19-07)~~ (10-1-12)T
  - v. Each staff person assisting with participant medications must successfully complete and follow the "Assistance with Medications" course available through the Idaho Professional Technical Education Program approved by the Idaho State Board of Nursing or other Department-approved training. ~~Staff previously trained on assistance with medications by a licensed nurse but who have not completed this course must meet this requirement by July 1, 2007.~~ ~~(3-19-07)~~ (10-1-12)T
  - vi. Residential habilitation service providers who provide direct care or services must satisfactorily complete a criminal background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)
  - vii. Have appropriate certification or licensure if required to perform tasks which require certification or licensure. (3-19-07)
- b. All skill training for agency direct service staff must be provided by a Qualified Intellectual Disabilities Professional (QIDP) who has demonstrated experience in writing skill training programs. (3-29-12)
- c. Prior to delivering services to a participant, agency direct service staff must complete an orientation program. The orientation program must include the following subjects: (3-29-12)
  - i. Purpose and philosophy of services; (3-19-07)
  - ii. Service rules; (3-19-07)
  - iii. Policies and procedures; (3-19-07)
  - iv. Proper conduct in relating to waiver participants; (3-19-07)

- v. Handling of confidential and emergency situations that involve the waiver participant; (3-19-07)
- vi. Participant rights; (3-19-07)
- vii. Methods of supervising participants; (3-19-07)
- viii. Working with individuals with developmental disabilities; and (3-19-07)
- ix. Training specific to the needs of the participant. (3-19-07)
- d.** Additional training requirements must be completed within six (6) months of employment with the residential habilitation agency and include at a minimum: (3-29-12)
  - i. Instructional techniques: Methodologies for training in a systematic and effective manner; (3-19-07)
  - ii. Managing behaviors: Techniques and strategies for teaching adaptive behaviors; (3-19-07)
  - iii. Feeding; (3-19-07)
  - iv. Communication; (3-19-07)
  - v. Mobility; (3-19-07)
  - vi. Activities of daily living; (3-19-07)
  - vii. Body mechanics and lifting techniques; (3-19-07)
  - viii. Housekeeping techniques; and (3-19-07)
  - ix. Maintenance of a clean, safe, and healthy environment. (3-19-07)
- e.** The provider agency will be responsible for providing on-going training specific to the needs of the participant as needed. (3-19-07)
- 02. Residential Habilitation -- Certified Family Home (CFH).** (3-29-12)
  - a.** An individual who provides direct residential habilitation services in his own home must be certified by the Department to operate a certified family home under IDAPA 16.03.19, "Rules Governing Certified Family Homes," and must receive residential habilitation program coordination services provided through the Department, or its contractor, for the residential habilitation services he provides. (3-29-12)
  - b.** CFH providers providing residential habilitation services as a DD Waiver provider must meet the following minimum qualifications: (3-29-12)
    - i. Be at least eighteen (18) years of age; (3-29-12)
    - ii. Be a high school graduate, have a GED, or demonstrate the ability to provide services according to a plan of service; (3-29-12)
    - iii. Have current CPR and First Aid certifications; (3-29-12)
    - iv. Be free from communicable diseases; ~~(3-29-12)~~(10-1-12)T
    - v. Each CFH provider of residential habilitation services assisting with participant medications must successfully complete and follow the "Assistance with Medications" course available through the Idaho Professional

Technical Education Program approved by the Idaho State Board of Nursing, or other Department-approved training. (3-29-12)

vi. CFH providers of residential habilitation services who provide direct care and services must satisfactorily complete a criminal history check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks;" and (3-29-12)

vii. Have appropriate certification or licensure if required to perform tasks which require certification or licensure. (3-29-12)

c. All skill training for CFH providers who are providing residential habilitation services must be provided through the Department or its contractor by qualified intellectual disabilities professional (QIDP) who has demonstrated experience in writing skill training programs. (3-29-12)

d. Prior to delivering residential habilitation services to a participant, the CFH provider must complete an orientation training in the following areas as provided by either the Department, or its contractor or both, and include the following areas: (3-29-12)

i. Purpose and philosophy of services; (3-29-12)

ii. Service rules; (3-29-12)

iii. Policies and procedures; (3-29-12)

iv. Proper conduct in relating to waiver participants; (3-29-12)

v. Handling of confidential and emergency situation that involve the waiver participant; (3-29-12)

vi. Participant rights; (3-29-12)

vii. Methods of supervising participants; (3-29-12)

viii. Working with individuals with developmental disabilities; and (3-29-12)

ix. Training specific to the needs of the participant. (3-29-12)

e. Additional training requirements for CFH providers providing residential habilitation waiver services must be completed by the CFH provider within six (6) months of certification date and include a minimum of the following: (3-29-12)

i. Instructional Techniques: Methodologies for training in a systematic and effective manner; (3-29-12)

ii. Managing behaviors: techniques and strategies for teaching adaptive behaviors; (3-29-12)

iii. Feeding; (3-29-12)

iv. Communication; (3-29-12)

v. Mobility; (3-29-12)

vi. Activities of daily living; (3-29-12)

vii. Body mechanics and lifting techniques; (3-29-12)

viii. Housekeeping techniques; and (3-29-12)



- ix. Maintenance of a clean, safe, and healthy environment. (3-29-12)
- f. The Department or its contractor will be responsible for providing on-going training to the CFH provider of residential habilitation specific to the needs of the participant as needed. (3-29-12)
- 03. Chore Services.** Providers of chore services must meet the following minimum qualifications: (3-19-07)
- a. Be skilled in the type of service to be provided; and (3-19-07)
- b. Demonstrate the ability to provide services according to a plan of service. (3-19-07)
- c. Chore service providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)
- 04. Respite Care.** Providers of respite care services must meet the following minimum qualifications: ~~(3-19-07)~~(10-1-12)T
- ~~a. Meet the qualifications prescribed for the type of services to be rendered or must be an individual selected by the waiver participant, the family or his guardian;~~ (3-19-07)
- ~~ba.~~ Have received care giving instructions in the needs of the person who will be provided the service; (3-19-07)
- ~~eb.~~ Demonstrate the ability to provide services according to a~~n~~ plan of service; ~~(3-19-07)~~(10-1-12)T
- ~~d. Have good communication and interpersonal skills and the ability to deal effectively, assertively and cooperatively with a variety of people;~~ (3-19-07)
- ~~e. Be willing to accept training and supervision by a provider agency or the primary caregiver of services; and~~ (3-19-07)
- ~~fe.~~ Be free of communicable diseases; ~~and~~ (3-19-07)(10-1-12)T
- ~~gd.~~ Respite care service providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)
- 05. Supported Employment.** Supported employment services must be provided by an agency ~~capable of that~~ supervises the direct service and ~~be is~~ accredited by the Commission on Accreditation of Rehabilitation Facilities; ~~or other comparable standards;~~ ~~or meets~~ State requirements to be a State-approved provider. Supported employment service providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." ~~(4-2-08)~~(10-1-12)T
- 06. Non-Medical Transportation.** Providers of non-medical transportation services must: ~~(3-19-07)~~(10-1-12)T
- a. Possess a valid driver's license; and (3-19-07)
- b. Possess valid vehicle insurance. (3-19-07)
- 07. Environmental Accessibility Adaptations.** ~~Environmental accessibility adaptations services must:~~ All services must be provided in accordance with applicable state or local building codes and meet state or local building, plumbing, and electrical requirements for certification. ~~(3-19-07)~~(10-1-12)T

- ~~a. Be done under a permit, if required; and (3-19-07)~~
- ~~b. Demonstrate that all modifications, improvements, or repairs are made in accordance with local and state housing and building codes. (3-19-07)~~

**08. Specialized Medical Equipment and Supplies.** ~~Specialized Equipment and Supplies purchased under this service must:~~ Providers of specialized medical equipment and supplies must be enrolled in the Medicaid program as participating medical vendor providers. Providers must ensure all items meet applicable standards of manufacture, design, and installation. Preference will be given to equipment and supplies that are the most cost-effective option to meet the participant's needs. ~~(3-19-07)(10-1-12)T~~

- ~~a. Meet Underwriter's Laboratory, FDA, or Federal Communication Commission standards where applicable; and (3-19-07)~~
- ~~b. Be obtained or provided by authorized dealers of the specific product where applicable. This may include medical supply businesses or organizations that specialize in the design of the equipment. (3-19-07)~~

**09. Personal Emergency Response System.** Personal emergency response systems ~~(PERS)~~ providers must demonstrate that the devices installed in a waiver participant's homes ~~meet Federal Communications Standards, or Underwriter's Laboratory standards, or equivalent standards.~~ (3-19-07)(10-1-12)T

**10. Home Delivered Meals.** ~~Services of Home Delivered Meals under this Subsection may only be provided by an agency capable of supervising the direct service and must~~ Providers of home-delivered meals must be a public agency or private business, and must exercise supervision to ensure that: ~~(7-1-11)(10-1-12)T~~

~~a. Provide assurances that~~ eEach meal meets one-third (1/3) of the Recommended Dietary Daily Allowance, as defined by the Food and Nutrition Board of the National Research Council ~~or meet physician ordered individualized therapeutic diet requirement of the National Academy of Sciences;~~ (3-19-07)(10-1-12)T

~~b. Must provide assurances that the meals are delivered on time and demonstrate the ability to deliver meals at a minimum of three (3) days per week;~~ Meals are delivered in accordance with the service plan, in a sanitary manner, and at the correct temperature for the specific type of food; ~~(3-19-07)(10-1-12)T~~

~~c. Maintain documentation reflecting the meals delivered are nutritionally balanced and made from the highest U.S.D.A. grade for each specific food served~~ A Registered Dietitian documents the review and approval of menus, menu cycles, and any changes or substitutions; and ~~(3-19-07)(10-1-12)T~~

~~d. Provide documentation of current driver's license for each driver; and (3-19-07)~~

~~ed. Must be~~ The agency or business is inspected and licensed as a food establishment by the District Health Department. ~~(3-19-07)(10-1-12)T~~

**11. Skilled Nursing.** Skilled ~~N~~nursing service providers must ~~provide documentation of current be licensed in Idaho licensure as a licensed professional registered nurse (RN) or licensed practical nurse (LPN) in good standing, or must be practicing on a federal reservation and be licensed in another state. Skilled nursing providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks."~~ (3-19-07)(10-1-12)T

**12. Behavior Consultation or Crisis Management.** Behavior Consultation or Crisis Management Providers must meet the following: (3-19-07)

~~a. Work for a provider agency capable of supervising the direct service or work~~ under the direct supervision of a licensed psychologist or Ph.D. in Special Education, with training and experience in treating severe behavior problems and training and experience in applied behavior analysis; and ~~(3-19-07)(10-1-12)T~~

~~b. Must have a Master's Degree in a behavioral science such as social work, psychology, psychosocial rehabilitation counseling, psychiatric nursing, special education or a closely related course of study; or (3-19-07)~~

- c. Be a licensed pharmacist; or (3-19-07)
- d. Be a Qualified Intellectual Disabilities Professional (QIDP). (3-19-07)
- e. Emergency back-up providers must meet the minimum residential habilitation provider qualifications described under IDAPA 16.04.17, "Rules Governing Residential Habilitation Agencies." (3-19-07)
- f. Behavior consultation or crisis management providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)

13. **Adult Day ~~Care~~ Health.** Providers of adult day ~~care~~ health services must notify the Department or its contractor for residential habilitation program coordination, on behalf of the participant, if the adult day care is provided in a certified family home other than the participant's primary residence. ~~The adult day care provider must be capable of supervising direct services, provide services as identified on the plan of service, provide care and supervision identified on the participant's residential habilitation plan, and~~ must meet the following ~~minimum qualifications~~ requirements: (3-29-12)(10-1-12)T

a. ~~Demonstrate the ability to communicate and deal effectively, assertively, and cooperatively with a variety of people;~~ Services provided in a facility must be provided in a facility that meets the building and health standards identified in IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)"; (3-19-07)(10-1-12)T

b. ~~Be a high school graduate, or have a GED or demonstrate the ability to provide services according to the plan of service;~~ Services provided in a home must be provided in a home that meets the standards of home certification identified in IDAPA 16.03.19, "Rules Governing Certified Family Homes"; (3-19-07)(10-1-12)T

~~e. Be free from communicable disease;~~ (3-19-07)

~~d.c.~~ Adult day ~~care~~ health providers who provide direct care or services must satisfactorily complete a criminal history check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks"; (4-2-08)(10-1-12)T

~~d.~~ Providers of adult day health must notify the Department on behalf of the participant, if the adult day health is provided in a Certified Family Home other than the participant's primary residence. The adult day health provider must provide care and supervision appropriate to the participant's needs as identified on the plan. (10-1-12)T

e. ~~Demonstrate knowledge of infection control methods; and~~ Adult day health providers who provide direct care or services must be free from communicable disease. (3-19-07)(10-1-12)T

~~f. Agree to practice confidentiality in handling situations that involve waiver participants.~~ (3-19-07)

14. **Dental Services.** Providers are credentialed by the contractor to ensure they meet the licensing requirements of the Idaho Board of Dentistry. Providers' duties are based on the contract requirements and are monitored and enforced by the contractor. (7-1-12)T

15. **Service Supervision.** The plan of service which includes all waiver services is monitored by the plan monitor or targeted service coordinator. (3-19-07)

# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.03.10 - MEDICAID ENHANCED PLAN BENEFITS

DOCKET NO. 16-0310-1203

### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202, 56-203, 56-250 through 56-257, and 56-260 through 56-266, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be held as follows:

<b>October 17, 2012 6:00 p.m. (MDT Time)</b>	<b>October 17, 2012 6:00 p.m. (MDT Time)</b>	<b>October 17, 2012 6:00 p.m. (PDT Time)</b>
<b>1720 Westgate Dr. Suite A Boise, Idaho 83704</b>	<b>421 Memorial Drive Pocatello, Idaho 83201</b>	<b>2195 Ironwood Court Coeur d'Alene, Idaho 83814</b>

If you are unable to attend a public hearing in any of the physical locations listed above, you can join the Boise public hearing from anywhere in the state via teleconference.

**Teleconference number: 1-888-706-6468**

**Participant Code: 526505**

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

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

The Idaho Department of Health and Welfare implemented the Children's System Redesign on July 1, 2011. Under the redesign, the Department is moving from a one-size-fits-all system that was only able to deliver therapy, to a system that provides a continuum of care based on the child's level of need. The new array of redesign benefits replaces developmental therapy and intensive behavioral intervention (IBI) services currently available under the State Plan.

Additionally, rules pertaining to the children's redesign services were approved by the Idaho Legislature during the 2011 legislative session. To transition children from developmental therapy and IBI to the redesign system, the Legislature approved a phased implementation plan to enroll children into the redesign according to their birthdays. The phased implementation plan has required the Department to operate both the old and new systems concurrently over the span of the transition year. The intent of keeping the old benefits in place (developmental therapy and IBI) was to ensure that families have services until their designated transition time to avoid any gap in services for their child.

To complete the transition to the redesigned system, rule changes are needed to remove the old developmental disability agency services. Specifically, the following changes are being made:

1. Remove old children's developmental disability agency services from chapter.
2. Add Idaho Infant Toddler Program to the chapter as an allowable provider for children's DD services.
3. Add clarifications to the new Children's System Redesign rules.
4. Remove children's developmental disability service coordination. Children's DD service coordination is being replaced with case management delivered by the Department under the redesigned system.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

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

There is no anticipated fiscal impact to the state general fund. This is a cost-neutral program that has been approved by the Legislature.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted on June 20, 2012. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 6, 2012, Idaho Administrative Bulletin, [Volume 12-6, pages 22 and 23](#).

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Lauren Ertz at (208) 287-1169.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2012.

DATED this 30th day of August, 2012.

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

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0310-1203**

**075. ENHANCED PLAN BENEFITS: COVERED SERVICES.**

Individuals who are eligible for the Medicaid Enhanced Plan Benefits are eligible for all benefits covered under IDAPA 16.03.09, "Medicaid Basic Plan Benefits," with the exception of coverage for dental services. In addition to those benefits, individuals in the enhanced plan are eligible for the following enhanced benefits as provided for in this chapter of rules. (5-8-09)

**01. Dental Services.** Dental Services are provided as described under Sections 080 through 089 of these rules. (3-29-12)

**02. Enhanced Hospital Benefits.** Organ transplants are provided under the Enhanced Hospital services as described in Sections 090 through 099 of these rules. (3-19-07)

**03. Enhanced Mental Health Benefits.** Enhanced Mental Health services are provided under Sections 100 through 147 of these rules. (3-19-07)

**04. Enhanced Home Health Benefits.** Private Duty Nursing services are provided under the Enhanced Home Health as described in Sections 200-219 of these rules. (3-19-07)

**05. Therapies.** Physical, Speech, and Occupational Therapy Providers as described in Section 215 of these rules. (3-19-07)

06. **Long Term Care Services.** The following services are provided under the Long Term Care Services. (3-30-07)
- a. Nursing Facility Services as described in Sections 220 through 299 of these rules. (3-19-07)
  - b. Personal Care Services as described in Sections 300 through 308 of these rules. (3-30-07)
  - c. A & D Waiver Services as described in Sections 320 through 330 of these rules. (3-30-07)
07. **Hospice.** Hospice services as described in Sections 450 through 459 of these rules. (3-19-07)
08. **Developmental Disabilities Services.** (3-19-07)
- a. Developmental Disability Standards as described in Sections 500 through 506 of these rules. (3-19-07)
  - ~~b. Children's Developmental Disability Services as described in Sections 520 through 528, 660 through 666, and 680 through 686 of these rules. ( )~~
  - ~~bc. Behavioral Health Prior Authorization Adult Developmental Disabilities Services as described in Sections 507 through 520, and 649 through 657 of these rules. (3-19-07)( )~~
  - ~~ed. ICF/ID as described in Sections 580 through 649 of these rules. (3-19-07)~~
  - ~~de. Developmental Disabilities Agencies as described in Sections 700 through 719 of these rules. (3-19-07)~~
09. **Service Coordination Services.** Service coordination as described in 720 through 779 of these rules. (3-19-07)
10. **Breast and Cervical Cancer Program.** Breast and Cervical Cancer Program is described in Sections 780 through 800 of these rules. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

~~215. PHYSICAL THERAPY, OCCUPATIONAL THERAPY AND SPEECH LANGUAGE PATHOLOGY SERVICES.~~

~~In addition to the providers listed at IDAPA 16.03.09 "Medicaid Basic Plan Benefits," Sections 730 through 739, physical therapy, occupational therapy, and speech language pathology services are covered under these rules when provided by a Developmental Disabilities Agencies. (4-2-08)~~

~~216~~5. - 219. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

**511. ADULT DEVELOPMENTAL DISABILITY SERVICES PRIOR AUTHORIZATION: COVERAGE AND LIMITATIONS.**

The scope of these rules defines prior authorization for the following Medicaid developmental disability services for adults: (3-29-12)

- and 01. **DD Waiver Services.** DD Waiver services as described in Sections 700 through 719 of these rules; (3-29-10)

**02. Developmental ~~Disabilities Agency Services~~ Therapy.** Developmental ~~Disabilities Agency services~~ therapy as described in Sections 649 through 659 of these rules and IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)"; and (7-1-11)( )

**03. Service Coordination.** Service Coordination for persons with developmental disabilities as described in Sections 720 through 779 of these rules. (3-19-07)

**512. ADULT DEVELOPMENTAL DISABILITY SERVICES PRIOR AUTHORIZATION: PROCEDURAL REQUIREMENTS.**

**01. Assessment for Plan of Service.** The assessment for a plan of service is required for all participants prior to the development of the plan of service. This assessment must include the following in Subsections 512.02 through 512.06 of these rules. (3-19-07)

**02. Physician's History and Physical.** The history and physical must include a physician's referral for nursing services under the DD waivers and for developmental disabilities agencies' services, if they are anticipated to be part of the plan of service. A physician's history and physical is required within the year prior to the initiation of service and thereafter on a frequency determined by the physician. For participants in Healthy Connections: (3-29-10)

**a.** The Healthy Connections physician may delegate to the Department the authority to approve developmental disability services. (3-19-07)

**b.** The Healthy Connections physician must conduct the history and physical, and may refer the participant for other evaluations. (3-19-07)

**03. Medical, Social, and Developmental History.** The medical, social and developmental history is used to document the participant's medical social and developmental history information. A current medical social and developmental history must be evaluated prior to the initiation of ~~DDA services~~ developmental therapy and must be reviewed annually to assure it continues to reflect accurate information about the participant's status. (3-29-12)( )

**a.** A medical, social and developmental history for each adult participant is completed by the Department or its contractor. ( )

**b.** Providers should obtain and utilize the medical, social developmental history documents generated by the Department or its contractor when one is necessary for adult program or plan development. (3-29-12)( )

~~**b.** A medical social and developmental history for children is required when the child is accessing DDA services for the first time, and must reflect accurate information about the participant's status. (3-29-12)~~

~~**c.** After the initial medical social development history for children, additional Medical Social and Development History services for children will be reimbursed if a qualified professional determines that it no longer reflects the current status of the participant. Please refer to Subsection 655 of these rules. (3-29-12)~~

**04. SIB-R.** The results of the SIB-R are used to determine the level of support for the participant. A current SIB-R assessment must be evaluated prior to the initiation of service and must be reviewed annually to assure it continues to reflect the functional status of the participant. (3-19-07)

~~**a.** The SIB-R for adults is completed by the Department or its contractor. Providers must obtain and utilize the document generated by the Department or its contractor when one is necessary for program or plan development. (3-29-12)( )~~

~~**b.** The SIB-R for children is required for all children accessing DDA services for the first time. (3-29-12)~~

~~e. After the initial SIB-R assessment for children, additional SIB-R assessments will be reimbursed if a qualified professional determines that the assessment no longer reflects the current status of the participant. Please refer to Subsection 655 of these rules. (3-29-12)~~

**05. Medical Condition.** The participant's medical conditions, risk of deterioration, living conditions, and individual goals. (3-19-07)

**06. Behavioral or Psychiatric Needs.** Behavioral or psychiatric needs that require special consideration. (3-19-07)

**513. ADULT DEVELOPMENTAL DISABILITY SERVICES PRIOR AUTHORIZATION: PLAN OF SERVICE.**

In collaboration with the participant, the Department must assure that the participant has one (1) plan of service. This plan of service is based on the individualized participant budget referred to in Section 514 of these rules and must identify all services and supports. Participants may develop their own plan or designate a paid or non-paid plan developer. In developing the plan of service, the plan developer and the participant must identify services and supports available outside of Medicaid-funded services that can help the participant meet desired goals. Authorized services must be delivered by providers who are selected by the participant. (3-29-12)

**01. Qualifications of a Paid Plan Developer.** Neither a provider of direct service to the participant nor the assessor may be chosen to be the paid plan developer. Family members and all others who wish to be paid for plan development must be employed as a service coordinator as defined in Sections 729 through 732 of these rules. (3-19-07)

**02. Plan Development.** The plan must be developed with the participant. With the participant's consent, the person-centered planning team may include family members, guardian, or individuals who are significant to the participant. In developing the plan of service, the plan developer and participant must identify any services and supports available outside of Medicaid-funded services that can help the participant meet desired goals. The plan of service must be submitted within forty-five (45) days prior to the expiration of the existing plan of service unless delayed because of participant unavailability due to extenuating circumstances. If the plan is not submitted within this time period, authorization for provider payments may be terminated. (3-19-07)

**03. Prior Authorization Outside of These Rules.** The plan developer must ensure that all services that require prior authorization outside of these rules are submitted to the appropriate unit of the Department. These services include: (3-19-07)

**a.** Durable Medical Equipment (DME); (3-19-07)

**b.** Transportation; and (3-19-07)

**c.** Physical therapy, occupational therapy, and speech-language pathology services ~~provided outside of a Development Disabilities Agency (DDA).~~ (4-2-08)( )

**04. No Duplication of Services.** The plan developer will ensure that there is no duplication of services. Duplicate services will not be authorized. (3-29-12)

**05. Plan Monitoring.** The participant, service coordinator or plan monitor must monitor the plan. The plan developer is the plan monitor unless there is a service coordinator, in which case the service coordinator assumes the roles of both service coordinator and plan monitor. The planning team must identify the frequency of monitoring, which must be at least every ninety (90) days. Plan monitoring must include the following: (3-19-07)

**a.** Review of the plan of service in a face-to-face contact with the participant to identify the current status of programs and changes if needed; (3-19-07)

**b.** Contact with service providers to identify barriers to service provision; (3-19-07)

**c.** Discuss with participant satisfaction regarding quality and quantity of services; and (3-19-07)



**d.** Review of provider status reviews. (3-29-12)

**e.** The provider will immediately report all allegations or suspicions of mistreatment, abuse, neglect, or exploitation, as well as injuries of unknown origin to the agency administrator, the Department, the adult protection authority, and any other entity identified under Section 39-5303, Idaho Code, or federal law. (3-29-12)

**06. Provider Status Reviews.** Service providers, with exceptions identified in Subsection 513.11 of these rules, must report the participant's progress toward goals to the plan monitor on the provider status review when the plan has been in effect for six (6) months and at the annual person-centered planning meeting. The semi-annual and annual reviews must include: (3-19-07)

**a.** The status of supports and services to identify progress; (3-19-07)

**b.** Maintenance; or (3-19-07)

**c.** Delay or prevention of regression. (3-19-07)

**07. Content of the Plan of Service.** The plan of service must identify the type of service to be delivered, goals to be addressed within the plan year, frequency of supports and services, and identified service providers. The plan of service must include activities to promote progress, maintain functional skills, or delay or prevent regression. (3-19-07)

**08. Informed Consent.** Unless the participant has a guardian with appropriate authority, the participant must make decisions regarding the type and amount of services required. During plan development and amendment, planning team members must each indicate whether they believe the plan meets the needs of the participant, and represents the participant's choice. If not, the plan or amendment must be referred to the Bureau of Care Management's Medicaid Consumer Relations Specialist to negotiate a resolution with members of the planning team. (3-19-07)

**09. Provider Implementation Plan.** Each provider of Medicaid services, subject to prior authorization, must develop an implementation plan that identifies specific objectives that demonstrate how the provider will assist the participant to meet the participant's goals and needs identified in the plan of service. (3-19-07)

**a.** Exceptions. An implementation plan is not required for waiver providers of: (3-19-07)

**i.** Specialized medical equipment; (3-19-07)

**ii.** Home delivered meals; (3-19-07)

**iii.** Environmental modifications; (3-19-07)

**iv.** Non-medical transportation; (3-19-07)

**v.** Personal emergency response systems (PERS); (3-19-07)

**vi.** Respite care; and (3-19-07)

**vii.** Chore services. (3-19-07)

**b.** Time for Completion. The implementation plan must be completed within fourteen (14) days after the initial provision of service, and revised whenever participant needs change. (3-19-07)

**c.** Documentation of Changes. Documentation of Implementation Plan changes will be included in the participant's record. This documentation must include, at a minimum, the reason for the change, documentation of coordination with other service providers (where applicable), the date the change was made, the signature of the person making the change complete with the date and title. (3-19-07)

**10. Addendum to the Plan of Service.** A plan of service may be adjusted during the year with an addendum to the plan. These adjustments must be based on a change to a cost, addition of a service or increase to a service, or a change of provider. Additional assessments or information may be clinically necessary. Adjustment of the plan of service is subject to prior authorization by the Department. (3-29-12)

**11. Community Crisis Supports.** Community crisis supports are interventions for participants who have been determined eligible for developmental disability services and who are at risk of losing housing, employment or income, or are at risk of incarceration, physical harm, family altercation, or other emergencies. Community crisis support may be authorized the following business day after the intervention if there is a documented need for immediate intervention, no other means of support are available, and the services are appropriate to rectify the crisis. Community crisis support is limited to a maximum of twenty (20) hours during any consecutive five (5) day period. (3-19-07)

**a. Emergency Room.** Crisis services may be provided in an emergency room during the ER evaluation process if the goal is to prevent hospitalization and return the participant to the community. (3-19-07)

**b. Before Plan Development.** Community crisis support may be provided before or after the completion of the assessment and plan of service. If community crisis support is provided before the completion of the assessment and plan of service, the plan of service must include an identification of the factors contributing to the crisis and a strategy for addressing those factors in the future. (3-19-07)

**c. Crisis Resolution Plan.** After community crisis support has been provided, the provider of the community crisis support service must complete a crisis resolution plan and submit it to the Department for approval within three (3) business days. (3-19-07)

**12. Annual Reauthorization of Services.** A participant's plan of service must be reauthorized annually. The Department must review and authorize the new plan of service prior to the expiration of the current plan. (3-19-07)

**a. Plan Developer Responsibilities for Annual Reauthorization.** A new plan of service must be provided to the Department by the plan developer at least forty-five (45) days prior to the expiration date of the current plan. Prior to this, the plan developer must: (3-19-07)

**i.** Notify the providers who appear on the plan of service of the annual review date. (3-19-07)

**ii.** Obtain a copy of the current annual provider status review from each provider for use by the person-centered planning team. Each provider status review must meet the requirements in Subsection 513.14.d of these rules. (3-19-07)

**iii.** Convene the person-centered planning team to develop a new plan of service. (3-19-07)

**b. Evaluation and Prior Authorization of the Plan of Service.** The plan of service must be evaluated and prior authorized in accordance with the requirements in Sections 507 and 513 of these rules. (3-19-07)

**c. Adjustments to the Annual Budget and Services.** The annual budget and services may be adjusted by the Department based on demonstrated outcomes, progress toward goals and objectives, and benefit of services. (3-29-12)

**d. Annual Status Reviews Requirement.** If the provider's annual status reviews are not submitted with the annual plan, services will not be authorized at the time of the annual reauthorization. These services may be added to the plan of service only by means of an addendum to the plan in accordance with Subsection 513.12 of these rules. (3-19-07)

**e. Reapplication After a Lapse in Service.** For participants who are re-applying for service after a lapse in service, the assessor must evaluate whether assessments are current and accurately describe the status of the participant. (3-19-07)

f. Annual Assessment Results. An annual assessment must be completed in accordance with Section 512 of these rules. (3-19-07)

**13. Complaints and Administrative Appeals.** (3-29-12)

a. Participant complaints about the assessment process, eligibility determination, plan development, quality of service, and other relevant concerns may be referred to the Division of Medicaid. (3-29-12)

b. A participant who disagrees with a Department decision regarding program eligibility and authorization of services under these rules may file an appeal. Administrative appeals are governed by provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (3-29-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**521. CHILDREN'S DEVELOPMENTAL DISABILITY PRIOR AUTHORIZATION (PA): DEFINITIONS.**

For the purposes of Sections 520 through 528 of these rules, the following terms are used as defined below. (7-1-11)

**01. Assessment.** A process that is described in Section 522 of these rules for program eligibility and in Section 526 of these rules for plan of service. (7-1-11)

**02. Baseline.** A participant's skill level prior to intervention written in measurable, behaviorally-stated terms. (7-1-11)

**03. Child.** A person who is under the age of eighteen (18) years. (7-1-11)

**04. Family.** The participant and his parent(s) or legal guardian. (7-1-11)

**05. Family-Centered Planning Process.** A process facilitated by the plan developer, by which the family-centered planning team collaborates with the participant to develop the plan of service. (7-1-11)

**06. Family-Centered Planning Team.** The group who develops the plan of service. This group includes, at a minimum, the child participant (unless otherwise determined by the family-centered planning team), the parent or legal guardian and the plan developer. The family-centered planning team may include others identified by the family or agreed upon by the family and the Department as important to the process. (7-1-11)

**07. ICF/ID.** Intermediate care facility for persons with intellectual disabilities. (7-1-11)

**08. Individualized Family Service Plan (IFSP).** An initial or annual plan of service, developed by the Department or its designee, for providing early intervention services to children from birth up to age three (3) years of age (36 months). This plan must meet the provisions of the Individuals with Disabilities Education Act (IDEA), Part C. The IFSP may serve as the plan of service if it meets all of the components of the plan of service. The IFSP may also serve as a program implementation plan. (7-1-11)(      )

**09. Level of Support.** The amount of services and supports necessary to allow the individual to live independently and safely in the community. (7-1-11)

**10. Medical, Social, and Developmental Assessment Summary.** A form used by the Department to gather a participant's medical, social and developmental history and other summary information. It is required for all participants receiving home and community-based services under a plan of service. The information is used in the assessment and authorization of a participant's services. (7-1-11)

**11. Plan Developer.** A paid or non-paid person identified by the participant who is responsible for

developing one (1) plan of service and subsequent addenda that cover all services and supports based on a family-centered planning process. (7-1-11)

**12. Plan Monitor.** A person who oversees the provision of services on a paid or non-paid basis. (7-1-11)

**13. Plan of Service.** An initial or annual plan that identifies all services and supports based on a family-centered planning process, and which is developed for providing DD services to children birth through seventeen (17) years of age. (7-1-11)

**14. Practitioner of the Healing Arts, Licensed.** A licensed physician, physician assistant, or nurse practitioner. (7-1-11)

**15. Prior Authorization (PA).** A process for determining a participant's eligibility for services and medical necessity prior to the delivery or payment of services as provided by Sections 520 and 528 these rules. (7-1-11)

**16. Provider Status Review.** The written documentation that identifies the participant's progress toward goals defined in the plan of service, and demonstrates the continued need for the service. (7-1-11)

**17. Right Care.** Accepted treatment for defined diagnosis, functional needs and abilities to achieve the desired outcome. The right care is consistent with best practice and continuous quality improvement. (7-1-11)

**18. Right Place.** Services delivered in the most integrated setting in which they normally occur, based on the participant's choice to promote independence. (7-1-11)

**19. Right Price.** The most integrated and least expensive services that are sufficiently intensive to address the participant's needs. The amount is based on the individual's needs for services and supports as identified in the assessment. (7-1-11)

**20. Right Outcomes.** Services based on assessed need that ensure the health and safety of the participant and result in progress, maintenance, or delay or prevention of regression for the participant. (7-1-11)

**21. Services.** Evaluation, diagnostic, therapy, training, assistance, and support services that are provided to persons with developmental disabilities. (7-1-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**523. ~~TRANSITION TO NEW CHILDREN'S DEVELOPMENTAL DISABILITY BENEFITS.~~ (RESERVED)**

~~**01. Phase-in Schedule.** To transition to the new benefits under Sections 520 through 528, Sections 660 through 666, and Sections 680 through 686 of these rules, a child will be phased in to the new benefits by order of his birthdate. (7-1-11)~~

~~**02. Notification.** During the phased implementation, the Department will notify a family three (3) months prior to their child's birthdate. (7-1-11)~~

~~**03. New Applicants.** A new applicant entering the system will be enrolled in the new children's DD benefit programs. (7-1-11)~~

~~**04. Opportunity for Early Enrollment.** A family may opt to transition their child to the new benefits prior to their child's birthdate. The Department will accept application for a family who chooses to opt in early, but transitioning a child at his scheduled transition date will be the Department's top priority. (7-1-11)~~

~~**05. Duplication of Services.** A child will not be able to receive both the new children's HCBS state plan~~

~~option and children's waiver services listed in Section 660 through 666 and 680 through 688, at the same time he is receiving the old DDA services listed in Section 649 through 659.~~ (7-1-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**526. CHILDREN'S DEVELOPMENTAL DISABILITY PRIOR AUTHORIZATION (PA): PLAN OF SERVICE PROCESS.**

In collaboration with the participant, the Department must ensure that the participant has one (1) plan of service. This plan of service is developed within the individualized participant budget referred to in Section 527 of these rules and must identify all services and supports. The participant and his parent or legal guardian may develop their own plan or use a paid or non-paid plan developer to assist with plan development. The plan of service must identify services and supports if available outside of Medicaid-funded services that can help the participant meet desired goals.

(7-1-11)

**01. Plan Development and Monitoring.** Paid plan development and monitoring must be provided by the Department or its contractor. Non-paid plan development and monitoring may be provided by the family, or a person of their choosing, when this person is not a paid provider of services identified on the child's plan of service.

(7-1-11)

**02. Plan of Service Development.** The plan of service must be developed with the parent or legal guardian, and the child participant (unless otherwise determined by the family-centered planning team). With the parent or legal guardian's consent, the family-centered planning team may include other family members or individuals who are significant to the participant.

(7-1-11)

**a.** In developing the plan of service, the family-centered planning team must identify any services and supports available outside of Medicaid-funded services that can help the participant meet desired goals.

(7-1-11)

**b.** The plan of service must identify, at a minimum, the type of service to be delivered, goals to be addressed within the plan year, target dates, and methods for collaboration.

(7-1-11)

**03. No Duplication of Services.** The plan developer must ensure that there is no duplication of services.

(7-1-11)

**04. Plan Monitoring.** The family-centered planning team must identify the frequency of monitoring, which must be at least every six (6) months. The plan developer must meet face-to-face with the participant at least annually. Plan monitoring must include the following:

(7-1-11)

**a.** Review of the plan of service with the parent or legal guardian to identify the current status of programs and changes if needed;

(7-1-11)

**b.** Contact with service providers to identify barriers to service provision;

(7-1-11)

**c.** Discuss with parent or legal guardian satisfaction regarding quality and quantity of services; an

(7-1-11)

**d.** Review of provider status reviews.

(7-1-11)

**05. Provider Status Reviews.** The service providers in Sections 664 and 684 of these rules must report to the plan monitor the participant's progress toward goals. The provider must complete a six (6) month and annual provider status review. The provider status review must be submitted to the plan monitor within forty-five (45) calendar days prior to the expiration of the existing plan of service.

(7-1-11)

**06. Informed Consent.** The participant and his parent or legal guardian must make decisions regarding the type and amount of services required. During plan development and amendment, planning team members must

each indicate whether they believe the plan meets the needs of the participant, and represents the participant's choice. (7-1-11)

**07. Provider Program Implementation Plan.** Providers of children's waiver services listed under Section 684 of these rules must develop an implementation plan that identifies specific objectives that demonstrate how the provider will assist the participant to meet the participant's goals and needs identified in the plan of service. (7-1-11)( )

**a.** The implementation plan must be completed within fourteen (14) calendar days after the initial provision of service, and revised whenever participant needs change. (7-1-11)

**b.** Documentation of implementation plan changes will be included in the participant's record. This documentation must include, at a minimum, the reason for the change, documentation of coordination with other service providers (where applicable), the date the change was made, and the signature of the person making the change complete with his title and the date signed. (7-1-11)

**08. Addendum to the Plan of Service.** A plan of service may be adjusted during the year with an addendum to the plan. These adjustments must be based on changes in a participant's need or demonstrated outcomes. Additional assessments or information may be clinically necessary. Adjustment of the plan of service requires a parent's or legal guardian's signature and may be subject to prior authorization by the Department. (7-1-11)

**09. Annual Reauthorization of Services.** A participant's plan of service must be reauthorized annually. The Department must review and authorize the new plan of service prior to the expiration of the current plan. (7-1-11)

**a.** Annual Eligibility Determination Results. An annual determination must be completed in accordance with Section 522 of these rules. (7-1-11)

**b.** Plan Developer Responsibilities for Annual Reauthorization. A new plan of service must be provided to the Department by the plan developer at least ~~forty five~~ **ten (4510)** calendar days prior to the expiration date of the current plan. Prior to this, the plan developer must: (7-1-11)( )

**i.** Notify the providers who appear on the plan of service of the annual review date. (7-1-11)

**ii.** Obtain a copy of the current annual provider status review from each provider for use by the family-centered planning team. Each provider status review must meet the requirements in Subsection 526.06 of these rules. (7-1-11)

**iii.** Convene the family-centered planning team to develop a new plan of service. (7-1-11)

**c.** Evaluation and Prior Authorization of the Plan of Service. The plan of service must be evaluated and prior authorized in accordance with the requirements in Sections 520 and 526 of these rules. (7-1-11)

**d.** Adjustments to the Annual Budget and Services. The annual budget ~~and services~~ may be adjusted ~~based on demonstrated outcomes, progress toward goals and objectives, and benefit of services~~ **when there are documented changes that may support placement in a different budget category as identified in Section 527 of these rules. Services may be adjusted at any time during the plan year.** (7-1-11)( )

**e.** Reapplication After a Lapse in Service. For participants who are re-applying for service after at least a thirty (30) calendar day lapse in service, the assessor must evaluate whether assessments are current and accurately describe the status of the participant. (7-1-11)

**527. CHILDREN'S DEVELOPMENTAL DISABILITY PRIOR AUTHORIZATION (PA): PROVIDER REIMBURSEMENT.**

Providers are reimbursed on a fee-for-service basis for services identified on the participant's plan of service and within the participant's individualized budget. The Department will monitor the budget setting methodology on an ongoing basis to ensure that participant needs are accurately reflected in the methodology. (7-1-11)

**01. Individualized Budget Methodology.** The following five (5) categories are used when determining individualized budgets for children with developmental disabilities: (7-1-11)

**a.** HCBS State Plan Option. Children meeting developmental disabilities criteria. (7-1-11)

**b.** Children's DD Waiver - Level I. (7-1-11)

i. Children meeting ICF/ID level of care criteria who qualify based on functional limitations when their composite full scale functional age equivalency is less than fifty percent (50%) of their chronological age; or (7-1-11)

ii. Children who have an overall age equivalency up to fifty-three percent (53%) of their chronological age when combined with a General Maladaptive Index between minus seventeen (-17), and minus twenty-one (-21) inclusive. (7-1-11)

**c.** Children's DD Waiver - Level II. (7-1-11)

i. Children meeting ICF/ID level of care criteria who qualify based on functional limitations when their composite full scale functional age equivalency is less than fifty percent (50%) of their chronological age; and (7-1-11)

ii. Have an autism spectrum disorder diagnosis. (7-1-11)

**d.** Children's DD Waiver - Level III. Children meeting ICF/ID level of care criteria who qualify based on maladaptive behaviors when their General Maladaptive Index is minus twenty-two (-22) or less. (7-1-11)

**e.** Act Early Waiver. (7-1-11)

i. Children age three (3) through six (6) meeting ICF/ID level of care criteria who qualify based on maladaptive behaviors when their General Maladaptive Index is minus twenty-two (-22) or less, and their composite full scale functional age equivalency is less than fifty percent (50%) of their chronological age; or (7-1-11)

ii. Children age three (3) through six (6) meeting ICF/ID level of care criteria who have an autism spectrum disorder diagnosis. (7-1-11)

**02. Participant Notification of Budget Amount.** The Department notifies each participant of his set budget amount as part of the eligibility determination process. The notification will include how the participant may appeal the set budget amount. (7-1-11)

**03. Annual Re-Evaluation.** Individualized budgets will be re-evaluated annually. At the request of the participant, the Department will also re-evaluate the set budget amount when there are documented changes ~~in the participant's individualized needs and it is demonstrated that these additional needs cannot be supported by the current budget~~ that may support placement in a different budget category as identified in this rule. (7-1-11)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**634. -- 647~~8~~. (RESERVED)**

**~~648. INTRODUCTION TO DEVELOPMENTAL DISABILITIES AGENCIES SECTION.~~**

~~Sections 649 through 659 of these rules include the requirements for developmental disabilities agencies delivering services to children and adults. The benefit requirements for developmental therapy, Intensive Behavioral Intervention (IBI), and other DDA services were moved from IDAPA 16.04.11, "Developmental Disabilities Agencies (DDA)," to this section of rules. IDAPA 16.04.11, "Developmental Disabilities Agencies (DDA)," has been rewritten~~

~~and renamed to: IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA). (7-1-11)~~

~~01. Background of the Children's System Redesign. (7-1-11)~~

~~a. In 2008, the Department began meeting with stakeholder groups to redesign developmental disabilities (DD) benefits for children. This project is known as the "Children's System Redesign." The Department will begin phased implementation of these redesigned benefits starting July 1, 2011. Implementation requirements are provided in Section 523 of these rules. (7-1-11)~~

~~b. In order to phase in these new benefits as seamlessly as possible, the Department will continue to operate the current children's DD benefits concurrently with the redesigned children's DD benefits. (7-1-11)~~

~~i. The current children's DD benefits are found under Sections 649 to 659 of these rules. (7-1-11)~~

~~ii. The redesigned children's DD benefits are found under Sections 520 through 528, 660 through 666, and 680 through 686 of these rules. (7-1-11)~~

~~02. Developmental Disabilities Agency Services for Adults Age Eighteen and Older. Current DDA services for adults have not been modified and are covered under Sections 649 to 659 of these rules. (7-1-11)~~

**649. DEVELOPMENTAL DISABILITIES AGENCIES (DDA) THERAPY.**

~~Under 42 CFR 440.130(d), ~~t~~The Department will pay for ~~rehabilitative services including medical or remedial services~~ developmental therapy provided by facilities that have entered into a provider agreement with the Department and are certified as developmental disabilities agencies by the Department. ~~Services provided by a developmental disabilities agency to children birth to three (3) years of age must meet the requirements and provisions of the Individuals with Disabilities Act (IDEA), Part C; the Family Education Rights and Privacy Act; Sections 16-101, et seq., Idaho Code, regarding early intervention services; and the Idaho State Plan for Early Intervention Services under IDEA, Part C. These requirements include adherence to procedural safeguards and time lines, multi-disciplinary assessments, evaluations, individualized family service plans, provision of early intervention services in the natural environment, transition planning, and enrollment and reporting requirements.~~~~

~~(3-19-07)( )~~

**650. DEVELOPMENTAL DISABILITIES AGENCY (DDA) SERVICES THERAPY: ELIGIBILITY.**

~~01. DDA Services Eligibility. Prior to receiving services developmental therapy in a DDA an individual must be determined by the Department or its contractor to have a developmental disability under Sections 500 through 506 of these rules and Section 66-402, Idaho Code be eighteen (18) years of age or older, and live in the community. (7-1-11)( )~~

~~02. Intensive Behavioral Intervention (IBI) Service Eligibility. IBI is available to children with developmental disabilities through the month of their twenty first birthday, who have the following characteristics: (7-1-11)~~

~~a. Self injurious, aggressive, or severely maladaptive behavior as evidenced by a General Maladaptive Index score of minus twenty-two (-22) or below on the Scales of Independent Behavior - Revised (SIB-R) or other behavioral assessment indicators identified by the Department; and (7-1-11)~~

~~b. A severe deficit, defined as equivalent to fifty percent (50%) or less of chronological age, in at least one (1) of the following areas: (7-1-11)~~

~~i. Verbal and nonverbal communication as evidenced by the SIB-R Social Interaction & Communication Skills cluster score; (7-1-11)~~

~~ii. Social interaction as evidenced by the SIB-R Social Interaction subscale score; or (7-1-11)~~

~~iii. Leisure and play skills as evidenced by the SIB-R Home/Community Orientation subscale score. (7-1-11)~~



651. ~~DDA SERVICES~~ **DEVELOPMENTAL THERAPY**: COVERAGE REQUIREMENTS AND LIMITATIONS.

Developmental ~~disabilities agency services~~ **therapy** must be recommended by a physician or other practitioner of the healing arts. ~~The following therapy services are reimbursable when provided in accordance with these rules.~~  
(7-1-11)(    )

~~01- Required DDA Services. Each DDA is required to provide developmental therapy; in addition, each DDA must provide or make available the following services: psychotherapy, occupational therapy, physical therapy, and speech and hearing therapy. Developmental therapy must be provided by qualified employees of the agency. Psychotherapy, occupational therapy, physical therapy, and speech and hearing therapy must either be provided by qualified employees of the agency or through a formal written agreement.~~  
(7-1-11)

~~a- Sufficient Quantity and Quality. All required services provided must be sufficient in quantity and quality to meet the needs of each person receiving services, and must be provided by qualified individuals in accordance with the requirements in Section 657 of these rules.~~  
(7-1-11)

~~b- When a Required Service Is Not Available. When a required service, other than developmental therapy, is not provided by the agency due to a documented shortage of available providers in a specific geographic area, the DDA must document its effort to secure the service or facilitate the referral for the needed service, including notifying the service coordinator, when the participant has one.~~  
(7-1-11)

**021. Requirements to Deliver Developmental Therapy.** Developmental therapy may be delivered in a developmental disabilities agency center-based program, the community, or the home of the participant. Participants living in a certified family home must not receive home-based developmental therapy in a certified family home. Developmental therapy includes individual developmental therapy and group developmental therapy. Developmental therapy ~~services~~ must be delivered by Developmental Specialists or paraprofessionals qualified in accordance with these rules, based on an comprehensive developmental assessment completed prior to the delivery of developmental therapy. ~~Developmental therapy will not be reimbursed if the participant is receiving psychosocial rehabilitation or partial care services as this is a duplication of services.~~  
(3-29-12)(    )

**a. Areas of Service.** These services must be directed toward the rehabilitation or habilitation of physical or mental developmental disabilities in the areas of self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency.  
(7-1-11)(    )

**b. Age-Appropriate.** Developmental therapy includes instruction in daily living skills the participant has not gained at the normal developmental stages in his life, or is not likely to develop without training or therapy. Developmental therapy must be age-appropriate.  
(7-1-11)

**c. Tutorial Activities and Educational Tasks are Excluded.** Developmental therapy does not include tutorial activities or assistance with educational tasks associated with educational needs that result from the participant's disability.  
(7-1-11)

**d. Settings for Developmental Therapy.** Developmental therapy, in both individual and group formats, must be available in both community-based and home-based settings, and be based on participant needs, interests, or choices.  
(7-1-11)

**e. Staff-to-Participant Ratio.** When group developmental therapy is center-based, there must be a minimum of one (1) qualified staff, who may be a paraprofessional or a Developmental Specialist, providing direct services for every twelve (12) participants. The community-based services must occur in integrated, inclusive settings and with no more than three (3) participants per qualified staff at each session. Additional staff must be added, as necessary, to meet the needs of each individual served.  
(7-1-11)(    )

~~03- Psychotherapy Services. The following psychotherapy services must be available through each agency and based on assessment(s) conducted by the professional qualified to deliver the service:~~  
(7-1-11)

~~a- Individual psychotherapy;~~  
(7-1-11)

- ~~b. Group psychotherapy in which there is a minimum ratio of one (1) qualified staff person for every twelve (12) individuals in group therapy; and (7-1-11)~~
- ~~c. Family centered psychotherapy that includes the participant and at least one (1) other family member at any given time. (7-1-11)~~
- ~~d. Psychotherapy services are limited to a maximum of forty five (45) hours in a calendar year, including individual, group, and family centered. (3-29-12)~~
- ~~e. Psychotherapy services must be provided by one (1) of the following qualified professionals: (7-1-11)~~
- ~~i. Licensed Psychiatrist; (7-1-11)~~
- ~~ii. Licensed Physician; (7-1-11)~~
- ~~iii. Licensed Psychologist; (7-1-11)~~
- ~~iv. Licensed Clinical Social Worker; (7-1-11)~~
- ~~v. Licensed Clinical Professional Counselor; (7-1-11)~~
- ~~vi. Licensed Marriage and Family Therapist; (7-1-11)~~
- ~~vii. Certified Psychiatric Nurse (RN), licensed in accordance with Title 54, Chapter 14, Idaho Code, or certified by a recognized national certification organization, and have a minimum of a master's degree; (7-1-11)~~
- ~~viii. Licensed Professional Counselor whose provision of psychotherapy is supervised by persons qualified above under Subsections 651.03.e.i. through 651.03.e.vii. of this rule; (7-1-11)~~
- ~~ix. Registered Marriage and Family Therapist Intern whose provision of psychotherapy is supervised as described in Title 54, Chapter 34, Idaho Code and IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists." (7-1-11)~~
- ~~x. Licensed Masters Social Worker whose provision of psychotherapy is supervised as described in IDAPA 24.14.01, "Rules of the State Board of Social Work Examiners"; or (7-1-11)~~
- ~~xi. A Psychologist Extender, registered with the Bureau of Occupational Licenses, whose provision of psychotherapy is supervised as described in IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners." (7-1-11)~~
- ~~04. Occupational Therapy Services. Occupational therapy services include individual occupational therapy and group occupational therapy. These services are limited in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Sections 730 through 739. Occupational therapy services must be available and provided by a licensed occupational therapist and be based on the results of an occupational therapy assessment completed in accordance with Section 655 of these rules. (7-1-11)~~
- ~~05. Physical Therapy Services. Physical therapy services include individual or group therapy. These services are limited in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Sections 730 through 739. Physical therapy services must be available and provided by a licensed physical therapist and be based on the results of a physical therapy assessment completed in accordance with Section 655 of these rules. (7-1-11)~~
- ~~06. Speech Language Pathology Services. Speech language pathology services include individual or group therapy. These services are limited in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Sections 730 through 739. Speech language pathology services must be available and provided by a qualified speech language pathologist, as defined in these rules, and be based on the results of a speech and language assessment~~

~~completed in accordance with Section 655 of these rules. (7-1-11)~~

~~**07. Optional Services.** DDAs may opt to provide any of the following services: pharmacological management, psychiatric diagnostic interviews, community crisis supports, and Intensive Behavioral Intervention (IBI). All services must be provided by qualified individuals in accordance with the requirements in Section 657 of these rules. (3-29-12)~~

~~**08. Pharmacological Management.** Pharmacological management is consultation for the purpose of prescribing, monitoring, or administering medications. These consultations must be provided by a physician or other practitioner of the healing arts in direct face-to-face contact with the participant and be provided in accordance with the plan of service with the type, amount, frequency, and duration of the service specified. The telephoning of prescriptions to the pharmacy is not a billable service. (7-1-11)~~

~~**09. Psychiatric Diagnostic Interview.** A psychiatric diagnostic interview must include a history, a current mental status examination, and offer recommendations for treatment interventions needed, if any. If the interview exam results in a recommendation for additional intervention and the recommendation is accepted by the participant and his parent or legal guardian, if applicable, the recommendation must be incorporated into the participant's plan of service with the type, amount, frequency, and duration of service specified. (7-1-11)~~

~~**a. Physician Requirement.** In order for a DDA to conduct a psychiatric diagnostic interview, the agency must have a physician on contract for the purpose of overseeing the services on the plan. (7-1-11)~~

~~**b. On Plan of Service.** A psychiatric diagnostic interview must be incorporated into the participant's plan of service. (7-1-11)~~

~~**c. Staff Qualifications.** A psychiatric diagnostic interview must be conducted by one (1) of the following professionals, in direct face-to-face contact with the participant: (7-1-11)~~

~~i. Psychiatrist; (7-1-11)~~

~~ii. Physician or other practitioner of the healing arts; (7-1-11)~~

~~iii. Psychologist; (7-1-11)~~

~~iv. Clinical social worker; or (7-1-11)~~

~~v. Clinical professional counselor. (7-1-11)~~

~~**10. Community Crisis Supports.** Community crisis supports are interventions for adult participants who have been determined eligible for developmental disability services and who are at risk of losing housing, employment or income, or are at risk of incarceration, physical harm, family alteration, or other emergencies. DDAs that choose to provide these services must do so in accordance with Sections 507 through 515 of these rules. (7-1-11)~~

~~**11. Intensive Behavioral Intervention.** DDA's that choose to offer Intensive Behavioral Intervention (IBI) must provide IBI services in accordance with Sections 656 of these rules. (7-1-11)~~

~~**a.** IBI is limited to a lifetime limit of thirty six (36) months. (7-1-11)~~

~~**b.** The DDA must receive prior authorization from the Department prior to delivering IBI services. (7-1-11)~~

~~**c.** IBI must only be delivered on an individualized, one-to-one (1-to-1) basis. (7-1-11)~~

~~**d.** Intensive behavioral intervention services will not be reimbursed if the participant is receiving psychosocial rehabilitation or partial care services as this is a duplication of services. (3-29-12)~~

~~**e.** After July 1, 2006, agencies must have provided developmental therapy for at least one (1) year~~

~~and not be operating under a provisional certification prior to providing IBI services. (3-29-12)~~

~~f. Agencies that were providing IBI services prior to July 1, 2006, are exempt from the requirement under Subsection 651.12.d. of this rule. (3-29-12)~~

~~g. IBI consultation, as described in Section 656 of these rules, is included in the thirty-six (36) month IBI limitation. The DDA must receive prior authorization from the Department prior to providing IBI Consultation.~~

~~402. Excluded Services.~~ The following services are excluded for Medicaid payments: (7-1-11)

~~a. Vocational services; (7-1-11)~~

~~b. Educational services; and (7-1-11)~~

~~c. Recreational services. (7-1-11)~~

~~403. Limitations on DDA Services Developmental Therapy.~~ DDA Developmental therapy services may not exceed the limitations as specified below. (3-29-12)(    )

~~a. The combination of therapy services listed in Subsections 651.02 through 651.06, and 651.11 of this rule Developmental therapy must not exceed twenty-two (22) hours per week. (3-29-12)(    )~~

~~b. Developmental Therapy services listed in Subsections 651.02 through 651.06, and 651.11 of this rule, provided in combination with Community Supported Employment services under Subsection 703.04 of these rules, must not exceed forty (40) hours per week. (3-29-12)(    )~~

~~c. When an HCBS waiver participant under Sections 700 through 719 of these rules receives adult day care health as provided in Subsection 703.12 of these rules, the combination of adult day care, health and developmental therapy and Occupational therapy must not exceed thirty (30) hours per week. (7-1-11)(    )~~

~~d. Only one (1) type of therapy service will be reimbursed during a single time period by the Medicaid program. No Developmental therapy services will not be reimbursed during periods when the participant is being transported to and from the agency. (7-1-11)(    )~~

**REQUIREMENTS FOR DEVELOPMENTAL DISABILITIES AGENCIES PROVIDING SERVICES**  
**(Sections 652 through 659)**

**652. DEVELOPMENTAL THERAPY: PROCEDURAL REQUIREMENTS FOR ~~A DDA PROVIDING SERVICES TO PERSONS EIGHTEEN YEARS OF AGE OR OLDER~~ INDIVIDUALS WITH AN ISP.**

~~This Section does not apply to adults who receive IBI or additional DDA services prior authorized under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program as described in IDAPA 16.03.09, "Medicaid Basic Plan Benefits." DDAs must comply with the requirements under Section 653 of these rules for those adults.~~

~~(7-1-11)~~

**01. Eligibility Determination.** Prior to the delivery of any DDA services developmental therapy, the person must be determined by the Department or its contractor to be eligible as defined under Section 66-402, Idaho Code, for DDA services be eighteen (18) years of age or older and live in the community. (7-1-11)(    )

~~a. For persons seeking Medicaid-funded DDA services who are eighteen (18) years of age or older, the Department or its designee determines eligibility for services. (7-1-11)~~

~~b. For persons eighteen (18) years of age or older who are not Medicaid participants, the DDA must follow the requirements under Subsection 653.01 of these rules. (7-1-11)~~

**02. Intake. Prior to the delivery of developmental therapy:** (7-1-11)(    )

~~a. For Medicaid participants eighteen (18) years of age or older, prior to the delivery of any Medicaid funded DDA services: (7-1-11)~~

~~i. The Department or its designee will have provided the A DDA with will obtain a participant's current medical, social, and developmental information; and from the Department or its designee. (7-1-11)(    )~~

~~ii. The participant must have an ISP that is authorized in accordance with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 507 through 515. Developmental therapy provided by the DDA must be included on the plan of service and be prior authorized by the Department or its designee before a participant can receive the service from the agency. (7-1-11)(    )~~

~~b. Participants eighteen (18) years of age or older receiving DDA services and who are using the Home and Community Based Services (HCBS) Waiver for the Aged and Disabled (A&D), State Plan PCS, or are living in a nursing facility must: (7-1-11)~~

~~i. Have DDA services prior authorized by the Department or its designee; and (7-1-11)~~

~~ii. DDAs must complete an Individual Program Plan (IPP) that meets the standards described in Subsections 653.04 through 653.06 of these rules. IPPs for these individuals do not require the signature of a physician or other practitioner of the healing arts. (7-1-11)~~

~~e. For participants eighteen (18) years of age or older who are not Medicaid participants, the DDA must follow the requirements under Subsection 653.02 of these rules. (7-1-11)~~

~~03. Assessments. Requirements for assessments are found under Subsections 655.01 through 655.06 of these rules. (7-1-11)~~

~~04. Individual Service Plan (ISP). For participants eighteen (18) years of age or older any services provided by the DDA must be included on the plan of service and be prior authorized by the Department or its designee before a participant can receive the service from the agency. (7-1-11)~~

~~05.3. **Documentation of Plan Changes.** Documentation of changes in the required plan of service or Program Implementation Plan must be included in the participant's record. This documentation must include, at a minimum, the reason for the change, the date the change was made, and the signature of the professional making the change complete with date, credential, and title. If there are changes to a Program Implementation Plan that affect the type or amount of service on the plan of service, an addendum to the plan of service must be completed. (7-1-11)~~

~~653. **REQUIREMENTS FOR A DDA PROVIDING SERVICES TO CHILDREN AGES THREE THROUGH SEVENTEEN AND ADULTS RECEIVING IBI OR ADDITIONAL DDA SERVICES PRIOR AUTHORIZED UNDER THE EPSDT PROGRAM** **DEVELOPMENTAL THERAPY: PROCEDURAL REQUIREMENTS FOR INDIVIDUALS WITH AN IPP.**~~

~~01. **Eligibility Determination.** Prior to the delivery of any DDA services, the DDA must determine and document the participant's eligibility in accordance with developmental therapy, the person must be determined by the Department or its contractor to be eligible as defined under Section 66-402, Idaho Code, be eighteen (18) years of age or older, and live in the community. For eligibility determination, the following assessments must be obtained or completed by the DDA: (7-1-11)(    )~~

~~a. Medical Assessment. This must contain medical information that accurately reflects the current status of the person and establishes categorical eligibility in accordance with Section 66-402(5)(a), Idaho Code; or (7-1-11)~~

~~b. Psychological Assessment. If the medical assessment does not establish categorical eligibility, the DDA must obtain or conduct a psychological assessment that accurately reflects the current status of the person and establishes categorical eligibility in accordance with Section 66-402(5)(a), Idaho Code. (7-1-11)~~

~~e. Standardized Comprehensive Developmental Assessment. This must contain developmental~~

~~information regarding functional limitations that accurately reflects the current status of the person and establishes functional eligibility based on substantial limitations in accordance with Section 66-402(5)(b), Idaho Code. (7-1-11)~~

~~02. Intake. The DDA must obtain information that accurately reflects the current status and needs of the participant prior to the delivery of services. Individuals using the Home and Community-Based Services (HCBS) waiver for the Aged and Disabled (A&D) or State Plan Personal Care Services and only requesting DDA services, have the option to access services through an Individual Program Plan. Individuals who select this option are not required to have a plan developer or an Individual Service Plan. Prior to the delivery of developmental therapy, a DDA must complete an Individual Program Plan (IPP) that meets the standards described below. (7-1-11)( )~~

~~a. The person must have been determined by the DDA to be eligible for DDA services. (7-1-11)~~

~~b. The DDA must obtain or complete a comprehensive medical and medical/social history. (7-1-11)~~

~~03. Assessments. Requirements for assessments are found under Subsections 655.01 through 655.06 of these rules. (7-1-11)~~

~~043. Individual Program Plan (IPP) Definitions. The delivery of each service developmental therapy on a plan of service must be defined in terms of the type, amount, frequency, and duration of the service. (7-1-11)( )~~

~~a. Type of service refers to the kind of service described in terms of: (7-1-11)~~

~~i. Discipline; (7-1-11)~~

~~ii. Group, individual, or family; and (7-1-11)~~

~~iii. Whether the service is home, community, or center-based. (7-1-11)~~

~~b. Amount of service is the total number of service hours during a specified period of time. This is typically indicated in hours per week. (7-1-11)~~

~~c. Frequency of service is the number of times service is offered during a week or month. (7-1-11)~~

~~d. Duration of service is the length of time. This is typically the length of the plan year. For ongoing services, the duration is one (1) year; services that end prior to the end of the plan year must have a specified end date. (7-1-11)~~

~~054. Individual Program Plan (IPP). For participants three (3) through seventeen (17) years of age and for adults receiving EPDST services, the DDA is required to complete an IPP. (7-1-11)( )~~

~~a. The IPP must be developed following obtainment or completion of all applicable assessments consistent with the requirements of this chapter. (7-1-11)~~

~~b. The planning process must include the participant, and his parent or his legal guardian if one exists, if applicable, and others the participant or his parent or legal guardian chooses. The participant's parent or and his legal guardian if one exists must sign the IPP indicating his participation in its development. The parent or participant and his legal guardian if one exists must be provided a copy of the completed IPP by the DDA. If the participant and his parent or his legal guardian are is unable to participate, the reason must be documented in the participant's record. A physician or other practitioner of the healing arts, and the parent or the participant, and his legal guardian if one exists, must sign the IPP prior to initiation of any services identified within the plan, except as provided under Subsection 652.02.b.ii. of these rules. (7-1-11)( )~~

~~c. The planning process must occur at least annually, or more often if necessary, to review and update the plan to reflect any changes in the needs or status of the participant. Revisions to the IPP requiring a change in type, amount, or duration of the service provided must be recommended by the physician or other practitioner of the healing arts prior to implementation of the change. Such recommendations must be signed by the physician or other~~

~~practitioner of the healing arts~~ require written authorization by the participant, his legal guardian if one exists, and must be maintained in the participant's file. ~~A parent or legal guardian must sign the IPP prior to initiation of any services identified within the plan.~~ (7-1-11)(    )

d. The IPP must be supported by the documentation required in the participant's record in accordance with IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)" record requirements. (7-1-11)

e. The IPP must promote self-sufficiency, the participant's choice in program objectives and activities, encourage the participant's participation and inclusion in the community, and contain objectives that are age-appropriate. The IPP must include: (7-1-11)

i. The participant's name and medical diagnosis; (7-1-11)

ii. The name of the assigned Developmental Specialist, the date of the planning meeting, and the names and titles of those present at the meeting; (7-1-11)

iii. The dated signature of the physician or other practitioner of the healing arts indicating his recommendation of the services on the plan; (7-1-11)

iv. The type, amount, frequency, and duration of therapy to be provided. For developmental therapy, the total hours of services provided cannot exceed the amount recommended on the plan. The amount and frequency of the type of therapy must not deviate from the IPP more than twenty percent (20%) over a period of a four (4) weeks, unless there is documentation of a participant-based reason; (7-1-11)

v. A list of the participant's current personal goals, interests and choices; (7-1-11)

vi. An accurate, current, and relevant list of the participant's specific developmental and behavioral strengths and needs. The list will identify which needs are priority based on the participant's choices and preferences. An IPP objective must be developed for each priority need; (7-1-11)

vii. A list of measurable behaviorally stated objectives, which correspond to the list of priority needs. A Program Implementation Plan must be developed for each objective; (7-1-11)

viii. The ~~discipline professional or~~ Developmental Specialist responsible for each objective; (7-1-11)(    )

ix. The target date for completion of each objective; (7-1-11)

x. The review date; and (7-1-11)

xi. A transition plan. The transition plan is designed to facilitate the participant's independence, personal goals, and interests. The transition plan must specify criteria for participant transition into less restrictive, more integrated settings. These settings may include ~~integrated classrooms~~, community-based organizations and activities, vocational training, supported or independent employment, volunteer opportunities, or other less restrictive settings. The implementation of some components of the plan may necessitate decreased hours of service or discontinuation of services from a DDA. (7-1-11)(    )

**065.** **Documentation of Plan Changes.** Documentation of required ~~plan of service or~~ Program Implementation Plan changes must be included in the participant's record. This documentation must include, at a minimum: (7-1-11)(    )

a. The reason for the change; (7-1-11)

b. Documentation of coordination with other services providers, where applicable; (7-1-11)

c. The date the change was made; and (7-1-11)

d. The signature of the professional making the change complete with date, credential, and title. Changes to the IPP require documented notification of the participant ~~or the participant's parent or~~ and his legal guardian, ~~if applicable if one exists~~. Changes in type, amount, or duration of services require written authorization from must be recommended by a physician or other practitioner of the healing arts, and Such recommendations require written authorization by the participant ~~or the participant's parent or~~ and his legal guardian if one exists prior to the change. If the signatures of the participant ~~or the parent~~ or his legal guardian cannot be obtained, then the agency must document in the participant's record the reason the signatures were not obtained. (7-1-11)(    )

~~654. REQUIREMENTS FOR A DDA PROVIDING SERVICES TO CHILDREN BIRTH TO THREE YEARS OF AGE (INFANT TODDLER).~~

~~Services provided by a DDA to children birth to three (3) years of age must meet the requirements and provisions of the Individuals with Disabilities Education Act (IDEA), Part C; the Family Education Rights and Privacy Act; Sections 16-101, et seq., Idaho Code, regarding early intervention services; and the Idaho State Plan for Early Intervention Services under IDEA, Part C. These requirements include: adherence to procedural safeguards and time lines, use of multi disciplinary assessments and Individualized Family Service Plans (IFSPs), provision of early intervention services in the natural environment, transition planning, and program enrollment and reporting requirements. For children birth to age three (3), the IFSP will be used in lieu of the Individual Program Plan (IPP).~~ (7-1-11)

~~01. Eligibility Determination. For a child birth to three (3) years of age, prior to the delivery of any DDA services:~~ (7-1-11)

~~a. In accordance with 34 CFR 303.321(e), the Department's regional Infant Toddler Program will determine eligibility for DDA services in accordance with Section 66-402, Idaho Code.~~ (7-1-11)

~~b. Upon request from the DDA, and after receiving consent from the parent or legal guardian for release of information, the Department's regional Infant Toddler Program will provide the DDA with documentation of the child's eligibility including a copy of the current IFSP, addendum(a) to the IFSP, assessments, and service records related to current DDA services.~~ (7-1-11)

~~02. Intake. Prior to the delivery of DDA services:~~ (7-1-11)

~~a. The DDA must obtain both a copy of the current IFSP and a copy of all current assessment(s) used by the Department's regional Infant Toddler Program to determine eligibility for DDA services; and~~ (7-1-11)

~~b. The DDA must conduct a meeting with the child's family, in cooperation with the child's service coordinator, to review the current IFSP and confirm the family's resources, priorities, and concerns with regard to the child's current developmental status and therapeutic needs.~~ (7-1-11)

~~03. Individualized Family Service Plan (IFSP). The Department or its designee will develop the initial IFSP for each eligible child, birth to three (3) years of age. Each DDA that provides DDA services to an eligible child, birth to three (3) years of age, must implement services according to the IFSP for that child as required by the Individuals with Disabilities Education Act, (P.L. 108-446, December 2004), Part C, Section 636 (d) and Title 16, Chapter 1, Idaho Code. The DDA must use the Department approved IFSP form in accordance with 34 CFR 303.344. The procedures for IFSP development, review, and assessment must be in accordance with 34 CFR 303.342.~~ (7-1-11)

~~a. Development of the IFSP. For a child who has been evaluated for the first time and has been determined to be eligible for DDA services, the initial IFSP developed by the Department must be completed within a forty five (45) day time period in accordance with 34 CFR 303.321(e).~~ (7-1-11)

~~b. Periodic Reviews. In cooperation with the child's service coordinator and other service providers, the DDA must participate in a review of the IFSP to be conducted every six (6) months, or more frequently, if conditions warrant or if the family requests such a review. The purpose of the periodic review is to identify progress made toward each objective and to determine whether these current outcomes and objectives need modification or revision. The review may be carried out in a meeting or by another means that is acceptable to the parent or legal guardian and other participants. These reviews must include the degree to which progress toward achieving the~~



- ~~outcomes is being made. (7-1-11)~~
- ~~i. The DDA must provide the child's service coordinator with any current assessments and other information from the ongoing assessment of the child to determine what services are needed and will be provided. (7-1-11)~~
- ~~ii. The DDA must identify outcomes and objectives for inclusion in the IFSP for any services to be provided through the DDA. (7-1-11)~~
- ~~e. Participants in the IFSP meetings and periodic reviews must be in accordance with 34 CFR 303.343. IFSP meetings and periodic reviews must include the parent or legal guardian, the service coordinator working with the family, persons providing direct services to the child and family as appropriate, and persons directly involved in conducting the assessments of the child. The family is encouraged to invite any family member, advocate, or friend to the meeting to assist in the planning process. (7-1-11)~~
- ~~d. The IFSP or IFSP addendum must be in accordance with 34 CFR 303.344, and include the following: (7-1-11)~~
- ~~i. A statement of the outcome; (7-1-11)~~
- ~~ii. Steps to support transitions; (7-1-11)~~
- ~~iii. Behaviorally stated objectives toward meeting that outcome; (7-1-11)~~
- ~~iv. Frequency, intensity, and method of delivering a service to meet the outcome; (7-1-11)~~
- ~~v. Measurability criteria, strategies, and activities; (7-1-11)~~
- ~~vi. Start and end dates; (7-1-11)~~
- ~~vii. A description of the natural environments in which early intervention services are appropriately provided, including a justification of the extent, if any, to which services will not be provided in a natural environment; and (7-1-11)~~
- ~~viii. A list of who will be involved in the direct intervention. (7-1-11)~~
- ~~e. There must be an order by a physician or other practitioner of the healing arts for all DDA services included on the IFSP. (7-1-11)~~
- ~~f. Transition to preschool programs must be in accordance with 34 CFR 303.148. (7-1-11)~~
- ~~i. At the IFSP review closest to the child's second birthday, outcomes must be written to address the steps needed to ensure appropriate services for the child at age three (3). (7-1-11)~~
- ~~ii. At least six (6) months prior to the child's third birthday, the DDA must document contact with the child's service coordinator and participation in the transition planning process at the time of referral of the child to his local school district for IDEA, Part B, eligibility determination. (7-1-11)~~
- ~~04. Parental Consent and Right to Decline Service. Written parental consent must be obtained before: (7-1-11)~~
- ~~a. Conducting the assessment of a child; and (7-1-11)~~
- ~~b. Initiating the provision of services. (7-1-11)~~
- ~~05. Ongoing Assessment of the Child. The assessment of each child must: (7-1-11)~~

- ~~a. Be conducted by personnel trained to utilize appropriate methods and procedures; (7-1-11)~~
- ~~b. Be based on informed clinical opinion; and (7-1-11)~~
- ~~c. Include the following: (7-1-11)~~
  - ~~i. A review of pertinent records related to the child's current health status and medical history. (7-1-11)~~
  - ~~ii. An assessment of the child's level of functioning in cognitive development, physical development including vision and hearing, communication development, social or emotional development, and adaptive development. (7-1-11)~~
  - ~~iii. An assessment of the unique needs of the child in terms of each of the developmental areas mentioned above in Subsection 654.05.c.ii. of this rule, including the identification of services appropriate to meet those needs. (7-1-11)~~
- ~~06. **Services in the Natural Environment.** Natural environments are settings that are natural or normal for the child's age peers who have no disability. To the maximum extent appropriate, in order to meet the needs of the child, early intervention services must be provided in natural environments, including the home and community settings in which children without disabilities participate. (7-1-11)~~
- ~~07. **Documentation of Program Changes.** Documentation of required plan or Program Implementation Plan changes must be included in the participant's record. This documentation must include, at a minimum, the reason for the change, documentation of coordination with other services providers, where applicable, the date the change was made, and the signature of the professional making the change complete with date, credential, and title. If there are changes to the Program Implementation Plan that affect the IFSP, an addendum to the IFSP must be completed. (7-1-11)~~
  - ~~a. In cooperation with the service coordinator; (7-1-11)~~
  - ~~b. With consent of the parent; (7-1-11)~~
  - ~~c. With an order by the child's physician or other practitioner of the healing arts; (7-1-11)~~
  - ~~d. With all changes documented on the enrollment form; and (7-1-11)~~
  - ~~e. A copy of the addendum and the enrollment form must be submitted to the Department. (7-1-11)~~

**654. DDA SERVICES DEVELOPMENTAL THERAPY: PROCEDURAL REQUIREMENTS.**

- 01. Assessment and Diagnostic Services.** DDAs must obtain assessments required under Sections 507 through 515 of these rules. Four (4) hours is the maximum Medicaid reimbursable time allowed for the combination of all assessment, evaluation, or diagnostic services provided in any calendar year. Psychological assessment benefits are separately limited to four (4) hours annually. Additional hours may be approved for a child through the month of his twenty-first birthday with approval from EPSDT staff in the Division of Medicaid. The following assessment and diagnostic services are reimbursable when provided in accordance with these rules: (3-29-12)( )
- ~~a. Comprehensive Developmental Assessment; and (7-1-11)( )~~
  - ~~b. Comprehensive Intensive Behavioral Intervention (IBI) Specific Skill Assessment. Before conducting the comprehensive IBI assessment, the DDA must receive prior authorization from the Department. The time required to complete this assessment is included in the thirty six (36) month IBI limitation but does not count against the four (4) hour limitation described in Subsection 655.01 of this rule; (3-29-12)( )~~
  - ~~c. Occupational Therapy Assessment; (7-1-11)~~

- ~~d. Physical Therapy Assessment; (7-1-11)~~
- ~~e. Speech and Language Assessment; (7-1-11)~~
- ~~f. Medical/Social History; and (7-1-11)~~
- ~~g. Psychological Assessment. Includes psychological testing and psychiatric diagnostic interview. (7-1-11)~~
- 02. Comprehensive Developmental Assessments** ~~Conducted by the DDA.~~ Assessments must be conducted by qualified professionals defined under Section 6575 of these rules ~~for the respective discipline or areas of service.~~ (7-1-11)(    )
- a.** Comprehensive Assessments. A comprehensive assessment must: (7-1-11)
- i. Determine the necessity of the service; (7-1-11)
- ii. Determine the participant's needs; (7-1-11)
- iii. Guide treatment; (7-1-11)
- iv. Identify the participant's current and relevant strengths, needs, and interests when these are applicable to the respective discipline; and (7-1-11)
- ~~v. For medical or psychiatric assessments, formulate a diagnosis. For psychological assessments, formulate a diagnosis and recommend the type of therapy necessary to address the participant's needs. For other types of assessments, recommend the type and amount of therapy necessary to address the participant's needs. (7-1-11)~~
- ~~b. Current Assessments Required. When the DDA determines developmental disabilities eligibility, current assessments must be completed or obtained as necessary. (7-1-11)~~
- eb.** Date, Signature, and Credential Requirements. Assessments must be signed and dated by the professional completing the assessment and include the appropriate professional credential or qualification of that person. (7-1-11)
- ~~d. Assessment must be completed within forty five (45) days. (7-1-11)~~
- ~~i. With the exception noted under Subsection 655.02.d.ii. of this rule, each assessment must be completed within forty five (45) calendar days of the date it was recommended by the physician or other practitioner of the healing arts. If the assessment is not completed within this time frame, the participant's records must contain participant based documentation justifying the delay. (7-1-11)~~
- ~~ii. This forty five (45) day requirement does not apply to participant plans of service authorized under Sections 507 through 515 of these rules. (7-1-11)~~
- 03c.** Requirements for Current Assessments. Assessments must accurately reflect the current status of the participant. (7-1-11)
- a.** To be considered current, assessments must be completed or updated at least every two (2) years for service areas in which the participant is receiving services on an ongoing basis. (3-29-12)(    )
- ~~b. Assessments or updates are required in disciplines in which services are being delivered and when recommended by a professional. At the time of the required review of the assessment(s), the qualified professional in the respective discipline must determine whether a full assessment or an updated assessment is required for the purpose of reflecting the participant's current status in that service area. If, during the required review of the assessment(s), the latest assessment accurately represents the status of the participant, the file must contain~~

~~documentation from the professional stating so. (3-29-12)~~

~~e. Medical/social histories and medical assessments must be completed at a frequency determined by the recommendation of a professional qualified to conduct those assessments. (3-29-12)~~

~~d. Once initial eligibility has been established, annual assessment of IQ is not required for persons whose categorical eligibility for DDA services is based on a diagnosis of mental retardation. IQ testing must be reconducted on a frequency determined and documented by the agency psychologist or at the request of the Department. (3-29-12)~~

~~e. Assessments must be completed or obtained prior to the delivery of therapy in each type of service. (3-29-12)~~

~~f. A current psychological assessment must be updated in accordance with Subsection 655.03.f. of these rules. (3-29-12)~~

~~i. Prior to the initiation of restrictive interventions to modify inappropriate behavior(s); (7-1-11)~~

~~ii. When it is necessary to determine eligibility for services or establish a diagnosis; (7-1-11)~~

~~iii. When a participant has been diagnosed with mental illness; or (7-1-11)~~

~~iv. When a child has been identified to have a severe emotional disturbance. (7-1-11)~~

~~04. Assessments for Adults. DDAs must obtain assessments required under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 507 through 515 of these rules. All specific skill assessments must be conducted in accordance with Subsection 655.06 of these rules. (7-1-11)~~

~~05. Types of Comprehensive Assessments. (7-1-11)~~

~~a. Comprehensive Developmental Assessment. A comprehensive developmental assessment must be conducted by a qualified Development Specialist and reflect a person's developmental status in the following areas: (7-1-11)( )~~

~~i. Self-care; (7-1-11)~~

~~ii. Receptive and expressive language; (7-1-11)~~

~~iii. Learning; (7-1-11)~~

~~iv. Gross and fine motor development; (7-1-11)~~

~~v. Self-direction; (7-1-11)~~

~~vi. Capacity for independent living; and (7-1-11)~~

~~vii. Economic self-sufficiency. (7-1-11)~~

~~b. Comprehensive Intensive Behavioral Intervention (IBI) Assessment. The requirements for the comprehensive IBI assessment are found under Subsection 656.03 of these rules. (7-1-11)~~

~~e. Occupational Therapy Assessment. Occupational therapy assessments must be conducted by an occupational therapist qualified under Section 657 of these rules and include gross and fine motor abilities, and recommendation of therapy necessary to address the participant's needs. (7-1-11)~~

~~d. Physical Therapy Assessment. Physical therapy assessments must be conducted by a physical therapist qualified under Section 657 of these rules and include gross and fine motor abilities, and recommendation~~

~~of therapy necessary to address the participant's needs. (7-1-11)~~

~~e. **Speech and Language Assessment.** Speech and language assessments must be conducted by a Speech-Language Pathologist who is qualified under Section 657 of these rules. (7-1-11)~~

~~f. **Medical Assessments.** Medical assessments must be completed by a physician or other practitioner of the healing arts who is qualified in accordance with Section 657 of these rules and accurately reflects the current status and needs of the person. (7-1-11)~~

~~g. **Medical/Social History.** Medical/social histories must be completed by a licensed social worker or other qualified professional working within the scope of his license. The medical/social history is a narrative report that must include: (7-1-11)~~

~~i. **Medical history including age of onset of disability, prenatal and postnatal birth issues, other major medical issues, surgeries, and general current health information;** (7-1-11)~~

~~ii. **Developmental history including developmental milestones and developmental treatment interventions;** (7-1-11)~~

~~iii. **Personal history including social functioning/social relationships, recreational activities, hobbies, any legal and criminal history, and any history of abuse;** (7-1-11)~~

~~iv. **Family history including information about living or deceased parents and siblings, family medical history, relevant family cultural background, resources in the family for the participant;** (7-1-11)~~

~~v. **Educational history including any participation in special education;** (7-1-11)~~

~~vi. **Prevocational or vocational paid and unpaid work experiences;** (7-1-11)~~

~~vii. **Financial resources; and** (7-1-11)~~

~~viii. **Recommendation of services necessary to address the participant's needs.** (7-1-11)~~

~~h. **Hearing Assessment.** A hearing assessment must be conducted by an audiologist who is qualified under Section 657 of these rules. (7-1-11)~~

~~i. **Psychological Assessment.** A psychological assessment includes psychological testing for diagnosis and assessment of personality, psychopathology, emotionality, or intellectual abilities (IQ test). The assessment must include a narrative report. Psychological assessment encompasses psychological testing and the psychiatric diagnostic interview. (7-1-11)~~

~~j. **Psychological Testing.** Psychological testing refers to any measurement procedure for assessing psychological characteristics in which a sample of a person's behavior is obtained and subsequently evaluated and scored using a standardized process. This does not refer to assessments that are otherwise conducted by a professional within the scope of his license for the purposes of determining a participant's mental status, diagnoses, or functional impairments. (7-1-11)~~

~~i. **Psychological testing may be provided when in direct response to a specific assessment question.** (7-1-11)~~

~~ii. **The psychological report must contain the reason for the performance of this service.** (7-1-11)~~

~~iii. **Agency staff may deliver this service if they meet one (1) of the following qualifications:** (7-1-11)~~

~~(1) **Licensed Psychologist;** (7-1-11)~~

~~(2) **Psychologist Extender; or** (7-1-11)~~

~~(3) A qualified therapist listed in Subsection 651.03.e. of these rules who has documented evidence of education or training qualifying him to administer, score, interpret, and report findings for the psychological test he will be performing. (7-1-11)~~

~~k. Psychiatric Diagnostic Interview. A psychiatric diagnostic interview must be conducted in accordance with Subsection 651.09 of these rules. (7-1-11)~~

**063. Requirements for Specific Skill Assessments.** Specific skill assessments must: (7-1-11)( )

a. ~~Further Assessment.~~ Further assess an area of limitation or deficit identified on a comprehensive assessment. (7-1-11)( )

b. ~~Related to a Goal.~~ Be related to a goal on the IPP; ~~or~~ ISP; ~~or~~ IFSP. (7-1-11)( )

c. ~~Conducted by Qualified Professionals.~~ Be conducted by qualified professionals ~~for the respective disciplines as defined in this chapter.~~ (7-1-11)( )

d. ~~Determine a Participant's Skill Level.~~ Be conducted for the purposes of determining a participant's skill level within a specific domain. (7-1-11)( )

e. ~~Determine Baselines.~~ Be used to determine baselines and develop the program implementation plan. (7-1-11)( )

**074. DDA Program Documentation Requirements.** Each DDA must maintain records for each participant the agency serves. Each participant's record must include documentation of the participant's involvement in and response to the services provided. (7-1-11)

a. General Requirements for Program Documentation. For each participant the following program documentation is required: (7-1-11)

i. Daily entry of all activities conducted toward meeting participant objectives. (7-1-11)

ii. Sufficient progress data to accurately assess the participant's progress toward each objective; and (7-1-11)

iii. A review of the data, and, when indicated, changes in the daily activities or specific implementation procedures by the qualified professional. The review must include the qualified professional's dated initials. (7-1-11)

iv. ~~When a participant receives developmental therapy, a~~ Documentation of six (6) month and annual reviews by the Developmental Specialist that includes a written description of the participant's progress toward the achievement of therapeutic goals, and the reason(s) why he continues to need services. (7-1-11)( )

b. ~~Additional Requirements for Participants Eighteen Years or Older. For participant's eighteen (18) years of age or older,~~ DDAs must also submit provider status reviews to the plan monitor in accordance with Sections 507 through 515 of these rules. (7-1-11)( )

c. ~~Additional Requirements for Participants Seven Through Sixteen. For participants ages seven (7) through sixteen (16), the DDA must also document that the child has been referred to the local school district in accordance with the collaboration requirements in IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)."~~ (7-1-11)

d. ~~Additional Requirements for Participants Birth to Three Years of Age. For participants birth to age three (3), the following are required in addition to those requirements in Subsection 654.01 of these rules:~~ (7-1-11)

i. ~~Documentation of the six (6) month and annual reviews;~~ (7-1-11)

~~ii. Documentation of participation in transition planning at the IFSP developed closest to the child's second birthday to ensure service continuity and access to community services as early intervention services end at age three (3); (7-1-11)~~

~~iii. Documentation that participant rights have been met in accordance with IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)."; (7-1-11)~~

~~iv. Documentation of participation in the transition meeting with the school district; and (7-1-11)~~

~~v. Documentation of consultation with other service providers who are identified on the IFSP. (7-1-11)~~

**085. DDA Program Implementation Plan Requirements.** For each participant, the DDA must develop a Program Implementation Plan for each DDA objective included on the participant's required plan of service. All Program Implementation Plans must be related to a goal or objective on the participant's plan of service. The Program Implementation Plan must be written and implemented within fourteen (14) days after the first day of ongoing programming and be revised whenever participant needs change. If the Program Implementation Plan is not completed within this time frame, the participant's records must contain participant-based documentation justifying the delay. The Program Implementation Plan must include the following requirements: (7-1-11)

**a.** Name. The participant's name. (7-1-11)

**b.** Baseline Statement. A baseline statement addressing the participant's skill level and abilities related to the specific skill to be learned. (7-1-11)

**c.** Objectives. Measurable, behaviorally-stated objectives that correspond to those goals or objectives previously identified on the required plan of service. (7-1-11)

**d.** Written Instructions to Staff. These instructions may include curriculum, interventions, task analyses, activity schedules, type and frequency of reinforcement, and data collection including probe, directed at the achievement of each objective. These instructions must be individualized and revised as necessary to promote participant progress toward the stated objective. (7-1-11)

**e.** Service Environments. Identification of the type of environment(s) where services will be provided. (7-1-11)

**f.** Target Date. Target date for completion. (7-1-11)

**g.** Results of the Psychological or Psychiatric Assessment. When a participant has had a psychological or psychiatric assessment, the results of the psychological or psychiatric assessment must be used when developing objectives to ensure therapies provided in the DDA accommodate the participant's mental health needs and to ensure that none of the therapeutic methods are contra-indicated or delivered in a manner that presents a risk to the participant's mental health status. (7-1-11)

**~~656. REQUIREMENTS FOR THE DELIVERY OF INTENSIVE BEHAVIORAL INTERVENTION (IBI).~~**

~~**01- Individualized and Comprehensive Interventions.** IBI consists of individualized, comprehensive interventions that have been shown to be effective and are used on a short term, one-to-one basis. These interventions: (7-1-11)~~

~~**a.** Produce measurable outcomes that diminish behaviors that interfere with the development and use of language and appropriate social interaction skills; or (7-1-11)~~

~~**b.** Broaden an otherwise severely restricted range of interest; and (7-1-11)~~

~~**c.** Increase the child's ability to participate in other therapies and environments. (7-1-11)~~

~~02. IBI Authorization and Review. IBI services must be reviewed and prior authorized for each service year as follows: (7-1-11)~~

~~a. Initial IBI Authorization. The Department determines IBI eligibility based on information submitted by the DDA and other information gathered by the Department as deemed necessary. At least twenty (20) working days prior to the intended start date of IBI services, the DDA must use Department approved forms to submit; (7-1-11)~~

~~i. Evidence of the child's eligibility for Intensive Behavioral Intervention; (7-1-11)~~

~~ii. The comprehensive IBI assessments; (7-1-11)~~

~~iii. The Program Implementation Plans; (7-1-11)~~

~~iv. The number of hours of service requested; and (7-1-11)~~

~~v. Measurable objectives. (7-1-11)~~

~~b. Three (3) Month Review. The agency must conduct and document a formal review of therapy objectives and direction for future therapy for each objective. (7-1-11)~~

~~c. Six (6) Month Review and Authorization. At least fifteen (15) working days prior to the expiration of prior authorized IBI services the agency must submit: (7-1-11)~~

~~i. The three (3) month review; (7-1-11)~~

~~ii. Documentation of the child's progress on IBI goals and outcomes of the IBI objectives for those six (6) months; and (7-1-11)~~

~~iii. When continuing IBI services are requested, the Program Implementation Plans, the number of hours of service requested, and the measurable objectives, using Department approved forms. Continued services will not be authorized when little or no progress has been documented and justification is inadequate to continue IBI services. (7-1-11)~~

~~d. Nine (9) Month Review. The agency must conduct and document a formal review of therapy objectives and direction for future therapy for each objective. (7-1-11)~~

~~e. Annual Review and Authorization. At least fifteen (15) working days prior to the expiration of prior authorized IBI services the agency must submit: (7-1-11)~~

~~i. The nine (9) month review; (7-1-11)~~

~~ii. Documentation of the child's progress on IBI goals and outcomes of the IBI objectives for that year; and (7-1-11)~~

~~iii. When continuing IBI services are requested: (7-1-11)~~

~~(1) A new SIB-R that reflects the child's current status and any additional information required to establish continuing eligibility; (7-1-11)~~

~~(2) The Program Implementation Plans; and (7-1-11)~~

~~(3) The number of hours of service requested and the measurable objectives, using Department approved forms. Continued services will not be authorized when little or no progress has been documented and justification is inadequate to continue IBI services. (7-1-11)~~

~~03. Comprehensive IBI Assessment. A comprehensive IBI assessment must be completed by a certified~~



~~IBI professional prior to the initial provision of IBI or IBI Consultation. The results of the assessment must form the basis for planning interventions. The assessment must include the following:~~ (7-1-11)

- ~~a. Review of Assessments and Relevant Histories. (7-1-11)~~
- ~~i. Medical history, medications, and current medical status; (7-1-11)~~
- ~~ii. Medical/social history that includes a developmental history and onset of developmental disability; (7-1-11)~~
- ~~iii. Comprehensive developmental assessment reflecting the child's current status; (7-1-11)~~
- ~~iv. Specific skill assessment, when such an assessment is completed; (7-1-11)~~
- ~~v. SIB-R Maladaptive Index and a list of the child's maladaptive behaviors; (7-1-11)~~
- ~~vi. Baseline of the child's maladaptive behavior(s), if available; (7-1-11)~~
- ~~vii. Psychological assessments and results of psychometric testing, or for very young children, a developmental assessment with equivalent age appropriate social-emotional status, if available; (7-1-11)~~
- ~~viii. A mental health or social and emotional assessment, such as the Child and Adolescent Functional Assessment Scale (CAFAS), when one has been completed; (7-1-11)~~
- ~~ix. Public school or Infant Toddler Program records including relevant birth records, multidisciplinary team assessments, recommendations, and Individualized Education Programs (IEPs) or Individualized Family Service Plans (IFSPs); and (7-1-11)~~
- ~~x. Other relevant assessments that may be available, including those for speech and hearing and physical and occupational therapy. (7-1-11)~~
- ~~b. Interviews. Interviews must be conducted with the child, if possible, and to the extent of the child's abilities; the child's parent or legal guardian, or the primary care provider; and any other individuals who spend significant amounts of time with the child. These interviews must result in a written summary of the findings of each interview and include the following: (7-1-11)~~
  - ~~i. Description of the child's desired and problem behaviors; (7-1-11)~~
  - ~~ii. Opinion about environmental stimuli that appear to precede problem behaviors; (7-1-11)~~
  - ~~iii. Opinion about the internal states or setting events that precede desired and problem behaviors; (7-1-11)~~
  - ~~iv. Opinion about identification of stimuli that maintain the desired or problem behaviors; and (7-1-11)~~
  - ~~v. Opinion about factors that alleviate problem behaviors and increase desired behaviors. (7-1-11)~~
- ~~e. Observation of the Child. Observations of the child must occur in environments in which the child spends significant amounts of time and where problem behaviors have been reported. Results of the observations must include the following: (7-1-11)~~
  - ~~i. Specific descriptions and frequencies of problem behaviors; (7-1-11)~~
  - ~~ii. Identification of environmental stimuli that appear to precede problem behaviors; (7-1-11)~~
  - ~~iii. Identification of internal states or setting events that appear to precede problem behaviors; (7-1-11)~~

- ~~(7-1-11)~~
- ~~iv. Identification of stimuli that maintain the desired or problem behaviors; and (7-1-11)~~
  - ~~v. Identification of factors that alleviate problem behaviors and increase desired behaviors. (7-1-11)~~
  - ~~d. Clinical Opinion. Clinical opinion about the underlying causes, antecedents, motivations, and communicative intent of desired and problem behaviors. (7-1-11)~~

~~04. IBI Program Implementation Plans Requirements. In addition to the requirements under Subsections 655.08.a. through 655.08.g. of these rules, the following are also required for IBI Implementation Plans: (7-1-11)~~

- ~~a. All IBI Implementation Plans must be completed on the Department approved form. (7-1-11)~~
- ~~b. On all IBI Implementation Plan cover sheets, the signature of a parent or legal guardian is required. If the signatures of the parent or legal guardian cannot be obtained, then the agency must document in the participant's record the reason the signatures were not obtained. (7-1-11)~~

~~05. IBI Transition Plan. An IBI transition plan must be developed when it is anticipated that IBI services will be terminated within the next Department or agency review period and the child will be moving into natural learning environments or less intensive therapy settings. The IBI transition plan may not be used as a substitute for, nor does it replace the transition plans required under Sections 653 and 654 of these rules. IBI transition plans must include the following steps to support the transition and the timelines for those steps: (7-1-11)~~

- ~~a. Setting. The setting to which the child will be moving and the therapists or persons who will be interacting with the child; and (7-1-11)~~
- ~~b. Training of New Therapists or Other Persons. How behavioral intervention techniques will be shared with new therapists or other persons in the new environments to encourage generalization and maintenance of appropriate behavior and action to be taken if the child demonstrates regression in the new setting in skills learned through IBI. (7-1-11)~~

~~06. IBI Consultation. Professionals may provide IBI consultation to parents and other family members, professionals, paraprofessionals, school personnel, child care providers, or other caregivers who provide therapy or care for an IBI eligible child in other disciplines to ensure successful integration and transition from IBI to other therapies, services, or types of care. IBI consultation objectives and methods of measurement must be developed in collaboration with the person receiving IBI consultation. (7-1-11)~~

- ~~a. Service Delivery Qualification. IBI consultation must be delivered by an IBI professional who meets the requirements in Section 657 of these rules. (7-1-11)~~
- ~~b. Measurable Progress. IBI consultation must result in measurable improvement in the child's behavior. It is not intended to be used for educational purposes only. (7-1-11)~~
- ~~c. Evidence of Progress. Persons who receive IBI consultation must meet with the IBI professional, agree to follow an IBI Implementation Plan, and provide evidence of progress. (7-1-11)~~
- ~~d. Individualized. IBI consultation may not be reimbursed when it is delivered to a group of parents. IBI consultation is specific to the unique circumstances of each child. (7-1-11)~~

~~657.5. DDA SERVICES DEVELOPMENTAL THERAPY: DDA PROVIDER QUALIFICATIONS AND DUTIES.~~

~~01. Audiologist, Licensed. A person licensed to conduct hearing assessment and therapy, in accordance with the Speech and Hearing Services Practice Act, Title 54, Chapter 29, Idaho Code, who either possesses a certificate of clinical competence in audiology from the American Speech, Language and Hearing~~

~~Association (ASHA) or will be eligible for certification within one (1) year of employment. The agency's personnel records must reflect the expected date of certification. (7-1-11)~~

~~**02. Counselor, Licensed Clinical Professional.** A person licensed to practice as a clinical professional counselor in accordance with Title 54, Chapter 34, Idaho Code and IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists." (7-1-11)~~

~~**03. Counselor, Licensed Professional.** A person licensed to practice as a professional counselor in accordance with Title 54, Chapter 34, Idaho Code and IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists." (7-1-11)~~

~~**04. Marriage and Family Therapist.** (7-1-11)~~

~~**a. Licensed Marriage and Family Therapist.** A person licensed to practice as a marriage and family therapist in accordance with Title 54, Chapter 34, Idaho Code and IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists." (7-1-11)~~

~~**b. Registered Marriage and Family Therapist Intern.** A person registered to practice as a marriage and family therapist intern under the direct supervision of a Licensed Marriage and Family Therapist, in accordance with Title 54, Chapter 34, Idaho Code, and IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists." (7-1-11)~~

**051. Developmental Specialist for Adults.** To be qualified as a Developmental Specialist for adults, a person must have a minimum of two hundred forty (240) hours of professionally-supervised experience with individuals who have developmental disabilities and either: (7-1-11)

**a.** Possess a bachelor's or master's degree in special education, early childhood special education, speech and language pathology, applied behavioral analysis, psychology, physical therapy, occupational therapy, social work, or therapeutic recreation; or (7-1-11)

**b.** Possess a bachelor's or master's degree in an area not listed above in Subsection 657.05.a. of this rule and have: (7-1-11)

**i.** Completed a competency course jointly approved by the Department and the Idaho Association of Developmental Disabilities Agencies that relates to the job requirements of a Developmental Specialist; and (7-1-11)

**ii.** Passed a competency examination approved by the Department. (7-1-11)

**c.** Any person employed as a Developmental Specialist in Idaho prior to May 30, 1997, unless previously disallowed by the Department, will be allowed to continue providing services as a Developmental Specialist as long as there is not a gap of more than three (3) years of employment as a Developmental Specialist. (7-1-11)

~~**06. Developmental Specialist for Children Three Through Seventeen.** A Developmental Specialist providing developmental assessment and therapy services to children ages three (3) through seventeen (17) must meet the requirements for a Developmental Specialist for adults, and must also meet the following requirements: (7-1-11)~~

~~**a.** Successfully complete a competency course approved by the Department that relates to developmental assessment and therapy for children; and (7-1-11)~~

~~**b.** Pass a competency examination approved by the Department. (7-1-11)~~

~~**07. Developmental Therapy Paraprofessionals Delivering Services to Participants Age Three and Older.** Paraprofessionals, such as aides or therapy technicians, may be used by an agency to provide developmental therapy to children age (3) and older if they are under the supervision of a Developmental Specialist. A developmental therapy paraprofessional must be at least seventeen (17) years of age. (7-1-11)~~

- ~~08. Developmental Specialist for Children Birth to Three. (7-1-11)~~
- ~~a. To provide developmental assessments and therapy to children birth to three (3) years of age, a person must have a minimum of two hundred forty (240) hours of professionally supervised experience with young children who have developmental disabilities and one (1) of the following: (7-1-11)~~
- ~~i. An Elementary Education Certificate or Special Education Certificate with an Endorsement in Early Childhood Special Education; or (7-1-11)~~
- ~~ii. A Blended Early Childhood/Early Childhood Special Education (EC/ECSE) Certificate; (7-1-11)~~
- ~~iii. A bachelor's or masters degree in special education, elementary education, speech language pathology, early childhood education, physical therapy, occupational therapy, psychology, social work, or nursing plus a minimum of twenty four (24) semester credits in Early Childhood/Early Childhood Special Education (EC/ECSE) from an accredited college or university. Courses taken must appear on college or university transcripts and must cover the following standards in their content: (7-1-11)~~
- ~~(1) Promotion of development and learning for children from birth to three (3) years; (7-1-11)~~
- ~~(2) Assessment and observation methods for developmentally appropriate assessment of young children; (7-1-11)~~
- ~~(3) Building family and community relationships to support early interventions; (7-1-11)~~
- ~~(4) Development of appropriate curriculum for young children, including IFSP and IEP development; (7-1-11)~~
- ~~(5) Implementation of instructional and developmentally effective approaches for early learning, including strategies for children who are medically fragile and their families; and (7-1-11)~~
- ~~(6) Demonstration of knowledge of policies and procedures in special education and early intervention and demonstration of knowledge of exceptionalities in children's development. (7-1-11)~~
- ~~b. Electives closely related to the content under Subsection 657.08.a.iii. of this rule may be approved by the Department with a recommendation from an institution of higher education. (7-1-11)~~
- ~~c. A developmental specialist who possesses a bachelor's or master's degree listed above under Subsection 657.08.a.ii. of this rule, must have completed a minimum of twenty (20) semester credits in EC/ECSE, and with Department approval are serving children under three (3) years of age as of July 1, 2005, will be allowed to continue providing services in accordance with his approved, conditional hiring agreement. (7-1-11)~~
- ~~d. When the Department in its role as lead agency for implementation of Part C of the Individuals with Disabilities Education Act (IDEA) has determined that there is a shortage of such qualified personnel to meet service needs in a specific geographic area: (7-1-11)~~
- ~~i. The Department may approve the most qualified individuals who are demonstrating satisfactory progress toward completion of applicable course work in accordance with the individual's approved plan to meet the required standard within three (3) years of being hired. (7-1-11)~~
- ~~ii. Satisfactory progress will be determined on an annual review by the Department. (7-1-11)~~
- ~~iii. An individual who has an approved plan for completion of twenty (20) semester credits in EC/ECSE prior to July 1, 2005, will be allowed to continue providing services so long as he demonstrates satisfactory progress on the plan and complete the requirements on the plan within three (3) years of his date of hire. (7-1-11)~~
- ~~09. Developmental Therapy Paraprofessionals Delivering Services to Children Birth to Three.~~

~~Paraprofessionals, such as aides or therapy technicians, may be used by an agency to provide developmental therapy to children birth to three (3) years of age if they are under the supervision of a Developmental Specialist fully qualified to provide services to participants in this age group. Developmental therapy paraprofessionals serving infants and toddlers from birth to three (3) years of age must meet the following qualifications: (7-1-11)~~

~~a. Be at least eighteen (18) years of age; (7-1-11)~~

~~b. Be a high school graduate or have a GED; and (7-1-11)~~

~~c. Have transcribed courses for a minimum of a Child Development Associate degree (CDA) or the equivalent through completion of twelve (12) semester credits from an accredited college or university in child development, special education or closely related coursework; or (7-1-11)~~

~~d. Have three (3) years of documented experience providing care to infants, toddlers, or children less than five (5) years of age with developmental delays or disabilities under the supervision of a child development professional, certified educator, licensed therapist, or Developmental Specialist. (7-1-11)~~

~~10. **Intensive Behavioral Intervention (IBI) Professional Delivering Services to Participants Three to Twenty One.** A person qualified to provide or direct the provision of Intensive Behavioral Intervention (IBI) must meet the following requirements: (7-1-11)~~

~~a. **Degree.** A qualified IBI professional must hold at least a bachelor's degree in a health, human services, educational, behavioral science, or counseling field from a nationally accredited university or college. (7-1-11)~~

~~b. **Experience.** An individual applying for IBI paraprofessional or professional certification must be able to provide documentation of one (1) year's supervised experience working with children with developmental disabilities. The year's experience must be gained through paid employment or university practicum experience or internship and be documented to include one thousand (1,000) hours of direct contact or care of children with developmental disabilities in a behavioral context. (7-1-11)~~

~~c. **Training and Certification.** Qualified IBI professionals and paraprofessionals must comply with the requirements under IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)," Section 410. (7-1-11)~~

~~11. **IBI Paraprofessionals Delivering Services to Participants Three to Twenty One.** A certified IBI paraprofessional may be used to provide IBI under the supervision of a certified IBI professional and must comply with Section 658 of these rules. An IBI paraprofessional must also: (7-1-11)~~

~~a. Be at least eighteen (18) years of age; (7-1-11)~~

~~b. **Experience.** An individual applying for IBI paraprofessional or professional certification must be able to provide documentation of one (1) year of supervised experience working with children with developmental disabilities. The year of experience must be gained through paid employment or university practicum experience or internship and be documented to include one thousand (1,000) hours of direct contact or care of children with developmental disabilities in a behavioral context. (7-1-11)~~

~~c. **Training and Certification.** Qualified IBI professionals and paraprofessionals must comply with the requirements under IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)," Section 410. (7-1-11)~~

~~12. **IBI Professionals Delivering Services to Children Birth to Three.** A person qualified to provide or direct the provision of IBI to children under three (3) years of age must meet the staff qualifications described under Subsections 657.08.a.ii. through 657.08.d. of these rules, 657.10.b. and 657.10.c. of these rules and the certification and training requirements above under Subsections 658.01.e. and 658.01.f. of these rules. (7-1-11)~~

~~13. **IBI Paraprofessionals Delivering Services to Children Birth to Three.** A paraprofessional serving infants and toddlers from birth to three (3) years of age must meet the following qualifications: (7-1-11)~~

- ~~a. Be at least eighteen (18) years of age; (7-1-11)~~
- ~~b. Be a high school graduate or have a GED; and (7-1-11)~~
- ~~c. Have transcribed courses for a minimum of a Child Development Associate degree (CDA) or the equivalent through completion of twelve (12) credits in child development, special education, or closely related coursework; or (7-1-11)~~
- ~~d. Have three (3) years of documented experience providing care to infants, toddlers or children under five (5) years of age under the supervision of a child development professional, certified educator, or licensed therapist or Developmental Specialist. (7-1-11)~~
- ~~e. Qualified IBI professionals and paraprofessionals must comply with the requirements under IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)," Section 410, and Subsections 658.01.e. and 658.01.f. of these rules. (7-1-11)~~
- ~~14. **Nurse Practitioner.** A licensed professional nurse (RN) who has met all the applicable requirements to practice as nurse practitioner under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." (7-1-11)~~
- ~~15. **Occupational Therapist.** A person qualified to conduct occupational therapy assessments and therapy in accordance with the requirements in IDAPA 22.01.09, "Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants." (7-1-11)~~
- ~~16. **Physical Therapist.** A person qualified to conduct physical therapy assessments and therapy in accordance with the requirements in IDAPA 22.01.05, "Licensure of Physical Therapists Idaho State Board of Medicine and Physical Therapist Assistants." (7-1-11)~~
- ~~17. **Physician.** A person licensed to practice medicine in Idaho in accordance with the provisions of the Medical Practice Act, Title 54, Chapter 18, Idaho Code. (7-1-11)~~
- ~~18. **Physician Assistant.** A person who is licensed by the Idaho Board of Medicine and who meets at least one (1) of the following provisions: (7-1-11)~~
- ~~a. Is currently certified by the National Commission on Certification of Physician Assistants to assist primary care physicians; or (7-1-11)~~
- ~~b. Has satisfactorily completed a program for preparing physician's assistants that: (7-1-11)~~
- ~~i. Was at least one (1) academic year in length; and (7-1-11)~~
- ~~ii. Consisted of supervised clinical practice and at least four (4) months, in the aggregate, of classroom instruction directed toward preparing students to deliver health care; and (7-1-11)~~
- ~~iii. Was accredited by the American Medical Association's Committee on Allied Health Education and Accreditation. (7-1-11)~~
- ~~19. **Psychiatric Nurse, Certified.** A licensed professional nurse (RN), licensed in accordance with Title 54, Chapter 14, Idaho Code, or certified by a recognized national certification organization, and have a minimum of a master's degree. (7-1-11)~~
- ~~20. **Psychiatrist.** A person licensed to practice medicine in Idaho in accordance with the provisions of the Medical Practice Act, Title 54, Chapter 18, Idaho Code, and who meets the requirements for certification in psychiatry by the American Board of Psychiatry and Neurology or the American Osteopathic Board of Neurology and Psychiatry. (7-1-11)~~
- ~~21. **Psychologist.** A person licensed to practice psychology in Idaho under Title 54, Chapter 23, Idaho~~

~~Code, and as outlined by IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners." (7-1-11)~~

~~22. **Psychologist Extender.** A person who practices psychology under the supervision of a licensed psychologist as required under Title 54, Chapter 23, Idaho Code, and as outlined by IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners," and who is registered with the Bureau of Occupational Licenses. (7-1-11)~~

~~23. **Social Worker, Licensed.** A person licensed in accordance with the Social Work Licensing Act, Title 54, Chapter 32, Idaho Code and IDAPA 24.14.01, "Rules of the State Board of Social Work Examiners." (7-1-11)~~

~~24. **Masters Social Worker, Licensed.** A person who is licensed as a masters social worker (LMSW) in accordance with Title 54, Chapter 32, Idaho Code and IDAPA 24.14.01, "Rules of the State Board of Social Work Examiners." (7-1-11)~~

~~25. **Clinical Social Worker, Licensed.** A person who is licensed as a clinical social worker (LCSW) in accordance with Title 54, Chapter 32, Idaho Code and IDAPA 24.14.01, "Rules of the State Board of Social Work Examiners." (7-1-11)~~

~~26. **Speech Language Pathologist, Licensed.** A person licensed to conduct speech language assessment and therapy in accordance with the Speech and Hearing Services Practice Act, Title 54, Chapter 29, Idaho Code, who possesses a certificate of clinical competence in speech language pathology from the American Speech, Language and Hearing Association (ASHA) or who will be eligible for certification within one (1) year of employment. The agency's personnel records must reflect the expected date of certification. (7-1-11)~~

02. **Developmental Therapy Paraprofessionals.** Paraprofessionals, such as aides or therapy technicians, may be used by an agency to provide developmental therapy if they are under the supervision of a Developmental Specialist. A developmental therapy paraprofessional must be at least seventeen (17) years of age. ( )

~~2703.~~ **Requirements for Collaboration with Other Providers.** (7-1-12)T

a. When participants are receiving rehabilitative or habilitative services from other providers, each DDA must coordinate each participant's DDA program with these providers to maximize skill acquisition and generalization of skills across environments, and to avoid duplication of services. The DDA must maintain documentation of this collaboration. This documentation includes other plans of services such as the Individual Education Plan (IEP), Personal Care Services (PCS) plan, Residential Habilitation plan, and the Psychosocial Rehabilitation (PSR) plan. The participant's file must also reflect how these plans have been integrated into the DDA's plan of service for each participant. (7-1-12)T

b. A participant who is seeking skill training from a PSR agency provider as well as a Developmental Disabilities service provider may receive services from both if the service objectives are not duplicative, and the comprehensive diagnostic assessment described in Section 114 of these rules clearly identifies the participant's need for skill training services that target skill deficits caused by the mental health condition. (7-1-12)T

~~6586.~~ **GENERAL STAFFING REQUIREMENTS FOR AGENCIES.**

01. **Standards for Paraprofessionals Providing Developmental Therapy ~~and IBI.~~** When a paraprofessional provides ~~either~~ developmental therapy ~~or IBI~~, the agency must ensure adequate supervision by a qualified professional during its service hours. All paraprofessionals must meet the training requirements under IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)," Section 410 and must meet the qualifications under Section ~~6575~~ of these rules. A ~~paraprofessional providing IBI must be supervised by an IBI professional; a~~ paraprofessional providing developmental therapy must be supervised by a Developmental Specialist. ~~Paraprofessionals providing developmental therapy to children birth to three (3) years of age must work under the supervision of a Developmental Specialist fully qualified to provide services to participants in this age group.~~ For paraprofessionals to provide developmental therapy ~~or IBI~~ in a DDA, the agency must adhere to the following standards: (7-1-11)( )

a. Limits to Paraprofessional Activities. The agency must ensure that paraprofessionals do not conduct participant assessments, establish a plan of service; ~~or~~ develop a Program Implementation Plan; ~~or conduct IBI consultation~~. These activities must be conducted by a professional qualified to provide the service.

(3-29-12)( )

b. Frequency of Supervision. The agency must ensure that a professional qualified to provide the service must, for all paraprofessionals under his supervision, on a weekly basis or more often if necessary: (7-1-11)

i. Give instructions; (7-1-11)

ii. Review progress; and (7-1-11)

iii. Provide training on the program(s) and procedures to be followed. (7-1-11)

c. Professional Observation. The agency must ensure that a professional qualified to provide the service must, on a monthly basis or more often if necessary, observe and review the work performed by the paraprofessional under his supervision, to ensure the paraprofessional has been trained on the program(s) and demonstrates the necessary skills to correctly implement the program(s). (7-1-11)

d. Limitations to Service Provision by an IBI Paraprofessional. IBI provided by a paraprofessional is limited to ninety percent (90%) of the direct intervention time, per individual participant. The remaining ten percent (10%) of the direct intervention time must be provided by the professional qualified to provide and direct the provision of IBI. (7-1-11)

~~e. Additional Training Requirements for IBI Professionals and IBI Paraprofessionals. Qualified IBI professionals and IBI paraprofessionals must complete and pass a Department approved training course and examination for certification. The training must include a curriculum that addresses standards of competence for the provision of IBI and ethical standards. Specifically, the curriculum must include: (7-1-11)~~

~~i. Assessment of individuals; (7-1-11)~~

~~ii. Behavioral management; (7-1-11)~~

~~iii. Services or treatment of individuals; (7-1-11)~~

~~iv. Supervised practical experience; and (7-1-11)~~

~~v. Successful completion of a student project that includes an observation of demonstrated competencies for all individuals applying for initial certification or recertification after July 1, 2003. (7-1-11)~~

~~f. Continuing Training Requirements for IBI Professionals and IBI Paraprofessionals. Each IBI professional and IBI paraprofessional, in order to maintain certification, must complete at least twelve (12) hours of yearly training, six (6) hours of which must cover behavior methodology or interventions shown to be effective. (7-1-11)~~

~~i. The initial IBI certification training meets the yearly training requirement for the calendar year in which the IBI professional or paraprofessional was first certified. (7-1-11)~~

~~ii. If the individual has not completed the required training during any yearly training period, he may not provide IBI services beginning with the anniversary date of the following period, and thereafter, until the required number of training hours have accumulated. As training hours accumulate, they will be accounted first to any training deficient prior yearly period before being applied to the current annual training period. Training hours may not be earned in a current annual training period to be applied to a future training period. (7-1-11)~~

~~iii. An individual may remain IBI certified, despite being unable to bill for services, through two (2) consecutive annual training periods during which that individual has deficient training hours. A DDA may begin~~



~~billing for the certified IBI Professional or Paraprofessional again after the required training hours are accumulated. (7-1-11)~~

~~iv. If an individual completes three (3) consecutive annual training periods without having accumulated sufficient training to satisfy the training requirement for the first of those periods, that individual's IBI certification is automatically rescinded and will no longer be recognized. To be recertified, the individual must retake the state IBI exam and complete the IBI Student Project, if not previously completed. (7-1-11)~~

**02. General Staffing Requirements for Agencies. (7-1-11)**

~~a. Administrative Staffing. Each DDA must have an agency administrator who is accountable for all service elements of the agency and who must be employed on a continuous and regularly scheduled basis. The agency administrator is accountable for the overall operations of the agency including ensuring compliance with this chapter of rules, overseeing and managing staff, developing and implementing written policies and procedures, and overseeing the agency's quality assurance program. (7-1-11)( )~~

~~ia. When the administrator is not a Developmental Specialist as defined in these rules, the DDA must employ a Developmental Specialist on a continuous and regularly scheduled basis who is responsible for the service elements of the agency; and (7-1-11)~~

~~ib. The Developmental Specialist responsible for the service elements of the agency must have two (2) years of supervisory or management experience providing developmental disabilities services to individuals with developmental disabilities. (7-1-11)~~

~~b. Other required staffing. The agency must have available, at a minimum, the following personnel, qualified in accordance with Section 657 of these rules, as employees of the agency or through formal written agreement: (7-1-11)~~

- ~~i. Speech language pathologist or audiologist; (7-1-11)~~
- ~~ii. Developmental Specialist; (7-1-11)~~
- ~~iii. Occupational therapist; (7-1-11)~~
- ~~iv. Physical therapist; (7-1-11)~~
- ~~v. Psychologist; and (7-1-11)~~
- ~~vi. Social worker, or other professional qualified to provide the required services under the scope of his license. (7-1-11)~~

~~657. **DDA SERVICES DEVELOPMENTAL THERAPY: PROVIDER REIMBURSEMENT.** For physician services where mid-levels are authorized to administer developmental disability services, the Department reimburses based on the Department's Medical Assistance fee schedule. Payment for developmental therapy provided by a DDA must be in accordance with rates established by the Department. (3-21-12)( )~~

~~658. -- 659. (RESERVED)~~

**CHILDREN'S HOME AND COMMUNITY BASED SERVICES (HCBS) STATE PLAN OPTION  
(Sections 660 through 669)**

**660. CHILDREN'S HOME AND COMMUNITY BASED SERVICES (HCBS) STATE PLAN OPTION.**  
In accordance with 1915i of the Social Security Act, the Department will pay for home and community based services provided by individuals or agencies that have entered into a provider agreement with the Department. Services provided by a developmental disabilities agency or the Infant Toddler Program to children birth to three (3) years of age must meet the requirements and provisions of the Individuals with Disabilities Education Act (IDEA),

Part C; the Family Education Rights and Privacy Act; Sections 16-101, et seq., Idaho Code, regarding early intervention services; and the Idaho State Plan for Early Intervention Services under IDEA, Part C. These requirements include adherence to procedural safeguards and time lines, multi-disciplinary assessments, evaluations, individualized family service plans, provision of early intervention services in the natural environment, transition planning, and enrollment and reporting requirements. (7-1-11)(    )

**660. CHILDREN’S HOME AND COMMUNITY BASED SERVICES (HCBS) STATE PLAN OPTION.**

In accordance with 1915i of the Social Security Act, the Department will pay for home and community based services provided by individuals or agencies that have entered into a provider agreement with the Department. Services provided by a developmental disabilities agency or the Infant Toddler Program to children birth to three (3) years of age must meet the requirements and provisions of the Individuals with Disabilities Education Act (IDEA), Part C; the Family Education Rights and Privacy Act; Sections 16-101, et seq., Idaho Code, regarding early intervention services; and the Idaho State Plan for Early Intervention Services under IDEA, Part C. These requirements include adherence to procedural safeguards and time lines, multi-disciplinary assessments, evaluations, individualized family service plans, provision of early intervention services in the natural environment, transition planning, and enrollment and reporting requirements. (7-1-11)(    )

**661. CHILDREN’S HCBS STATE PLAN OPTION: DEFINITIONS.**

For the purposes of these rules, the definitions in Section 521 of these rules apply. Additionally, the following terms apply to the Children’s Home and Community Based Services State Plan Option: (7-1-11)

**01. Agency.** A developmental disabilities agency (DDA) as defined in IDAPA 16.03.21, “Developmental Disabilities Agencies (DDA).” (7-1-11)

**02. Annual.** Every three hundred sixty-five (365) days except during a leap year which equals three hundred sixty-six (366) days. (7-1-11)

**03. Clinical Supervisor.** For the purposes of these rules, the clinical supervisor is ~~the~~ the professional responsible for the supervision of DDA staff as outlined in IDAPA 16.03.21, “Developmental Disabilities Agencies (DDA),” or is the professional responsible for the child’s IFSP as designated by the Infant Toddler Program. (7-1-11)(    )

**04. Community.** Natural, integrated environments outside of the home, school, or DDA center-based settings. (7-1-11)

**05. Developmental Disabilities Agency (DDA).** A DDA is an agency that is: (7-1-11)

**a.** A type of developmental disabilities facility, as defined in Section 39-4604(7), Idaho Code, that is non-residential and provides services on an outpatient basis; (7-1-11)

**b.** Certified by the Department to provide home and community based services to people with developmental disabilities, in accordance with these rules; (7-1-11)

**c.** A business entity, open for business to the general public; and (7-1-11)

**d.** Primarily organized and operated to provide home and community based services and the corresponding assessments to people with developmental disabilities. DDA services include evaluations, diagnostic, treatment, and support services that are provided on an outpatient basis to persons with developmental disabilities and may be community-based, home-based, or center-based in accordance with the requirements of this chapter. (7-1-11)

**06. Home and Community Based Services State (HCBS) Plan Option.** The federal authority under section 1915(i) of the Social Security Act that allows a state to provide through a state plan amendment, medical assistance for home and community-based services for elderly and individuals with disabilities, without determining that without the provision of services the individuals would require institutional level of care. (7-1-11)

**07. Human Services Field.** A particular area of academic study in health care, social services, education, behavioral science or counseling. (7-1-11)

**08. Infant Toddler Program.** The Infant Toddler Program serves children birth up to three (3) years of age (36 months), and must meet the requirements and provisions of the Individuals with Disabilities Education Act (IDEA), Part C; the Family Education Rights and Privacy Act; Sections 16-101, et seq., Idaho Code, regarding early intervention services; and the Idaho State Plan for Early Intervention Services under IDEA, Part C. These requirements include: adherence to procedural safeguards and time lines, use of multi-disciplinary assessments and Individualized Family Service Plans (IFSPs), provision of early intervention services in the natural environment, transition planning, and program enrollment and reporting requirements. ( )

**09. Integration.** The process of promoting a life for individuals with developmental disabilities that is as much as possible like that of other citizens of the community, including living in the community and having access to community resources. A further goal of this process is to enhance the social image and personal competence of individuals with developmental disabilities. (7-1-11)

**10. Paraprofessional.** A person qualified to provide direct support services which include respite and habilitative supports. (7-1-11)

**11. Professional.** A person qualified to provide direct intervention services which include habilitative intervention, therapeutic consultation, family education, family training, interdisciplinary training, and crisis intervention. (7-1-11)

**12. Support Services.** Support services may provide supervision for a participant, as well as may provide assistance to a participant by facilitating integration into the community. (7-1-11)

**662. CHILDREN'S HCBS STATE PLAN OPTION: PARTICIPANT ELIGIBILITY.**

Children's Home and Community Based State Plan Option eligibility will be determined by the Department as described in Section 520 of these rules. HCBS state plan option participants must meet the following requirements: (7-1-11)

**01. Age of Participants.** Participants eligible to receive children's HCBS must be birth through seventeen (17) years of age. (7-1-11)

**02. Eligibility Determinations.** The Department must determine that prior to receiving children's HCBS state plan option services, an individual must be determined to have a developmental disability under Sections 500 through 506 of these rules and Section 66-402, Idaho Code, and have a demonstrated need for Children's HCBS state plan option services. (7-1-11)

**03. Financial Eligibility.** The Department must determine that prior to receiving children's HCBS state plan option services, the individual is in an eligibility group covered under the Title XIX Medicaid State plan, and meets one (1) of the following criteria: (7-1-11)

~~a.~~ Has an income that does not exceed one hundred fifty percent (150%) of the Federal Poverty Level (FPL); ~~or~~ (7-1-11)( )

~~b.~~ Has an income that does not exceed three hundred percent (300%) of the Supplemental Security Income (SSI) Federal benefit rate (FBR), and is eligible for, but does not have to be enrolled in, HCBS under a 1915(c), (d), or (e) waiver, or 1115 demonstration program. (7-1-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**664. CHILDREN'S HCBS STATE PLAN OPTION: PROCEDURAL REQUIREMENTS.**

**01. General Requirements for Program Documentation.** The provider must maintain records for each participant served. Each participant's record must include documentation of the participant's involvement in and

response to the services provided. For each participant, the following program documentation is required: (7-1-11)

- a.** Direct service provider information that includes written documentation of the service provided during each visit made to the participant, and contains, at a minimum, the following information: (7-1-11)
  - i.** Date and time of visit; and (7-1-11)
  - ii.** Intervention and support services provided during the visit; and (7-1-11)
  - iii.** A statement of the participant's response to the service; and (7-1-11)
  - iv.** Length of visit, including time in and time out; and (7-1-11)
  - v.** Specific place of service. (7-1-11)
  - vi.** A copy of the above information will be maintained by the independent provider or DDA. Failure to maintain such documentation will result in the recoupment of funds paid for undocumented services. (7-1-11)

**02. Habilitative Supports Documentation.** In addition to the general requirements listed in Subsection 664.01 of this rule, the following must be completed: (7-1-11)

- a.** On a monthly basis, the habilitative support staff must complete a summary of the participant's response to the support service and submit the monthly summary to the clinical supervisor. (7-1-11)
- b.** The clinical supervisor reviews the summary on a monthly basis and when recommendations for changes to the type and amount of support are identified, submits the recommendations to the plan developer. (7-1-11)

**03. Family Education Documentation.** In addition to the general requirements listed in Subsection 664.01 of this rule, the DDA or Infant Toddler Program must survey the parent or legal guardian's satisfaction of the service immediately following a family education session. ~~(7-1-11)~~( )

**04. Reporting Requirements.** The clinical supervisor must complete at a minimum, six- (6) month and annual provider status reviews for habilitative support services provided. These provider status reviews must be completed more frequently, when so required on the plan of service. (7-1-11)

- a.** Documentation of the six- (6) month and annual reviews must be submitted to the plan monitor. (7-1-11)
- b.** The provider must use Department-approved forms for provider status reviews. (7-1-11)

**665. CHILDREN'S HCBS STATE PLAN OPTION: PROVIDER QUALIFICATIONS AND DUTIES.**

All providers of HCBS state plan option services must have a valid provider agreement with the Department. Performance under this agreement will be monitored by the Department. (7-1-11)

**01. Respite.** Respite services may be provided by an agency that is certified as a DDA and is capable of supervising the direct services provided, ~~or~~ by an independent respite provider, or by the Infant Toddler Program. An independent respite provider is an individual who has entered into a provider agreement with the Department. Providers of respite services must meet the following minimum qualifications: ~~(7-1-11)~~( )

- a.** Must be at least sixteen (16) years of age when employed by a DDA or Infant Toddler Program; or ~~(7-1-11)~~( )
- b.** Must be at least eighteen (18) years of age and be a high school graduate, or have a GED, to act as an independent respite provider; and (7-1-11)
- c.** Meet the qualifications prescribed for the type of services to be rendered, or must be an individual

selected by the participant, the family, or the participant's guardian; and (7-1-11)

- d. Have received instructions in the needs of the participant who will be provided the service; and (7-1-11)
- e. Demonstrate the ability to provide services according to a plan of service; and (7-1-11)
- f. Must satisfactorily complete a criminal history background check in accordance with IDAPA 16.05.06 "Criminal History and Background Checks"; and (7-1-11)
- g. When employed by a DDA or Infant Toddler Program, must be certified in CPR and first aid in accordance with the general training requirements under IDAPA 16.03.21, "Developmental Disabilities Services (DDA)." Independent respite providers must be certified in CPR and first aid prior to delivering services, and must maintain current certification thereafter. (~~7-1-11~~)(      )

**02. Habilitative Support Staff.** Habilitative supports must be provided by an agency certified as a DDA with staff who are capable of supervising the direct services provided, or by the Infant Toddler Program. Providers of habilitative supports must meet the following minimum qualifications: (~~7-1-11~~)(      )

- a. Must be at least eighteen (18) years of age; (7-1-11)
- b. Must be a high school graduate or have a GED; (7-1-11)
- c. Have received instructions in the needs of the participant who will be provided the service; (7-1-11)
- d. Demonstrate the ability to provide services according to a plan of service; (7-1-11)
- e. Must have six (6) months supervised experience working with children with developmental disabilities. This can be achieved in the following ways: (7-1-11)
  - i. Have previous work experience gained through paid employment, university practicum experience, or internship; or (7-1-11)
  - ii. Have on-the-job supervised experience gained through employment at a DDA or the Infant Toddler Program with increased supervision. Experience is gained by completing at least six (6) hours of job shadowing prior to the delivery of direct support services, and a minimum of weekly face-to-face supervision with the clinical supervisor for a period of six (6) months while delivering services. (~~7-1-11~~)(      )

f. Must complete competency coursework approved by the Department to demonstrate competencies related to the requirements to provide habilitative supports. (7-1-11)

g. In addition to the habilitative support qualifications listed in Subsections 665.02.a. through f. of this rule, habilitative support staff serving infants and toddlers from birth to three (3) years of age must meet the following qualifications: (7-1-11)

- i. Have transcribed courses for a minimum of a Child Development Associate degree (CDA) or the equivalent through completion of twelve (12) semester credits from an accredited college or university in child development, special education, or closely-related coursework; or (7-1-11)
- ii. Have three (3) years of documented experience providing care to infants, toddlers, or children less than five (5) years of age with developmental delays or disabilities under the supervision of a child development professional, certified educator, licensed therapist, or Developmental Specialist. (7-1-11)

**03. Family Education.** Family education must be provided by an agency certified as a DDA with staff who are capable of supervising the direct services provided, or by the Infant Toddler Program. Providers of family education must meet the following minimum qualifications: (~~7-1-11~~)(      )

a. Must hold at least a bachelor's degree in a human services field from a nationally-accredited university or college, and has: (7-1-11)

i. One (1) year experience providing care to children with developmental disabilities; (7-1-11)

ii. Must complete competency coursework approved by the Department to demonstrate competencies related to the requirements to provide family education; or (7-1-11)

b. Individuals working as Developmental Specialists for children ages birth through three (3) or three (3) through seventeen (17), and individuals certified as Intensive Behavioral Interventionist professionals prior to July 1, 2011, are qualified to provide family education until June 30, 2013. The individual must meet the requirements of the Department-approved competency coursework by June 30, 2013, to maintain his certification. (7-1-11)

c. Each professional providing family education services must complete at least twelve (12) hours of yearly training, six (6) hours of which must cover behavior methodology or interventions shown to be effective. If the individual has not completed the required training during any yearly training period, he may not provide family education services beginning with the anniversary date of the following period, and thereafter, until the required number of training hours have accumulated. As training hours accumulate, they will be accounted first to any training-deficient prior yearly period before being applied to the current annual training period. Training hours may not be earned in a current annual training period to be applied to a future training period. (7-1-11)

**04. Family Education for Children Birth to Three.** In addition to the family education qualifications listed in Subsections 665.03.a. through 665.03.c. of this rule, family education staff serving infants and toddlers from birth to three (3) years of age must have a minimum of two hundred forty (240) hours of professionally-supervised experience with young children who have developmental disabilities and one (1) of the following: (7-1-11)

a. An Elementary Education Certificate or Special Education Certificate with an Endorsement in Early Childhood Special Education; or (7-1-11)

b. A Blended Early Childhood/Early Childhood Special Education (EC/ECSE) Certificate; or (7-1-11)

c. A bachelor's or master's degree in special education, elementary education, speech-language pathology, early childhood education, physical therapy, occupational therapy, psychology, social work, or nursing plus a minimum of twenty-four (24) semester credits in Early Childhood/Early Childhood Special Education (EC/ECSE) from an accredited college or university. Courses taken must appear on college or university transcripts and must cover the following standards in their content: (7-1-11)

i. Promotion of development and learning for children from birth to three (3) years; (7-1-11)

ii. Assessment and observation methods for developmentally appropriate assessment of young children; (7-1-11)

iii. Building family and community relationships to support early interventions; (7-1-11)

iv. Development of appropriate curriculum for young children, including IFSP and IEP development; (7-1-11)

v. Implementation of instructional and developmentally effective approaches for early learning, including strategies for children who are medically fragile and their families; and (7-1-11)

vi. Demonstration of knowledge of policies and procedures in special education and early intervention and demonstration of knowledge of exceptionalities in children's development. (7-1-11)

d. Electives closely related to the content under Subsection 665.04.c.iii. of this rule may be approved

by the Department with a recommendation from an institution of higher education. (7-1-11)

**e.** Developmental specialists who possess a bachelor's or master's degree listed above under Subsection 665.04.c.ii. of this rule, have completed a minimum of twenty (20) semester credits in EC/ECSE, and with Department approval are serving children under three (3) years of age as of July 1, 2005, will be allowed to continue providing services in accordance with their approved, conditional hiring agreement. (7-1-11)

**f.** When the Department in its role as lead agency for implementation of Part C of the Individuals with Disabilities Education Act (IDEA) has determined that there is a shortage of such qualified personnel to meet service needs in a specific geographic area: (7-1-11)

**i.** The Department may approve the most qualified individuals who are demonstrating satisfactory progress toward completion of applicable course work in accordance with the individual's approved plan to meet the required standard within three (3) years of being hired. (7-1-11)

**ii.** Satisfactory progress will be determined on an annual review by the Department. (7-1-11)

**iii.** Individuals who have an approved plan for completion of twenty (20) semester credits in EC/ECSE prior to July 1, 2005, will be allowed to continue providing services so long as they demonstrate satisfactory progress on the plan and complete the requirements on the plan within three (3) years of their date of hire. (7-1-11)

**05. Requirements for Clinical Supervision.** All DDA services must be provided under the supervision of a clinical supervisor. The clinical supervisor must meet the qualifications to provide habilitative intervention as defined in Section 685 of these rules. Clinical supervisor(s) are professionals employed by a DDA or the Infant Toddler Program on a continuous and regularly scheduled basis. ~~(7-1-11)~~( )

**a.** The clinical supervisor is responsible for the oversight and supervision of service and support elements of the agency, including face-to-face supervision of agency staff providing direct services. (7-1-11)

**b.** The clinical supervisor must observe and review the direct services performed by all paraprofessional and professional staff on a monthly basis, or more often as necessary, to ensure staff demonstrate the necessary skills to correctly provide the services and support. (7-1-11)

**c.** Each DDA and the Infant Toddler Program must employ an adequate number of clinical supervisors to ensure quality service delivery and participant satisfaction. ~~(7-1-11)~~( )

**06. Requirements for Collaboration.** Providers of home and community based services must coordinate with the family-centered planning team as specified on the plan of service. (7-1-11)

**07. Requirements for Quality Assurance.** Providers of children's home and community based state plan option services must demonstrate high quality of services through an internal quality assurance review process. (7-1-11)

**08. DDA Services.** In order for a DDA to provide respite, habilitative supports, and family education the DDA must be certified to provide support services. Each DDA is required to provide habilitative supports. (7-1-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**680. CHILDREN'S WAIVER SERVICES.**

**01. Purpose of and Eligibility for Waiver Services.** Under 42 CFR Section 440.180, it is the intention of the Department to provide waiver services to eligible children to prevent unnecessary institutional placement, provide for the greatest degree of independence possible, enhance the quality of life, encourage individual choice,

and achieve and maintain community integration. For a participant to be eligible, the Department must find that the participant requires services due to a developmental disability that impairs his mental or physical function or independence, is capable of being maintained safely and effectively in a non-institutional setting, and would, in the absence of such services, need to reside in an ICF/ID. (7-1-11)( )

**02. Waiver Services Provided by a DDA or the Infant Toddler Program.** Services provided by a developmental disabilities agency or the Infant Toddler Program to children birth to three (3) years of age must meet the requirements and provisions of the Individuals with Disabilities Education Act (IDEA), Part C; the Family Education Rights and Privacy Act; Sections 16-101, et seq., Idaho Code, regarding early intervention services; and the Idaho State Plan for Early Intervention Services under IDEA, Part C. These requirements include adherence to procedural safeguards and time lines, multi-disciplinary assessments, evaluations, individualized family service plans, provision of early intervention services in the natural environment, transition planning, and enrollment and reporting requirements. ( )

(BREAK IN CONTINUITY OF SECTIONS)

**684. CHILDREN'S WAIVER SERVICES: PROCEDURAL REQUIREMENTS.**

**01. Authorization of Services on a Written Plan.** All children's waiver services must be identified on the plan of service and authorized by the Department. The plan of service must be reviewed by a plan developer at least every six (6) months or at a frequency determined by the family-centered planning team. (7-1-11)

**02. General Requirements for Program Documentation.** Children's waiver providers must maintain records for each participant the agency serves. Each participant's record must include documentation of the participant's involvement in and response to the services provided. For each participant the following program documentation is required: (7-1-11)

**a.** Direct service provider information which includes written documentation of each visit made or service provided to the participant, and will record at a minimum the following information: (7-1-11)

- i. Date and time of visit; and (7-1-11)
- ii. Services provided during the visit; and (7-1-11)
- iii. A statement of the participant's response to the service, including any changes in the participant's condition; and (7-1-11)
- iv. Length of visit, including time in and time out; and (7-1-11)
- v. Specific place of service. (7-1-11)

**b.** A copy of the above information will be maintained by the independent provider, Infant Toddler Program, or DDA. Failure to maintain such documentation will result in the recoupment of funds paid for undocumented services. (7-1-11)( )

**03. Program Implementation Plan Requirements.** For each participant receiving intervention and family training services, the DDA or the Infant Toddler Program must develop a program implementation plan to determine objectives to be included on the participant's required plan of service. (7-1-11)( )

**a.** All program implementation plan objectives must be related to a goal on the participant's plan of service. (7-1-11)

**b.** The program implementation plan must be written, implemented, and submitted to the plan developer within fourteen (14) days after the first day of ongoing programming and be revised whenever participant



needs change. If the program implementation plan is not completed within this time frame, the participant's records must contain **documented** participant-based ~~documentation justifying~~ **justification for** the delay. (7-1-11)(    )

**c.** The program implementation plan must be completed by the habilitative interventionist, and must include the following requirements: (7-1-11)

i. The participant's name. (7-1-11)

ii. A baseline statement. (7-1-11)

iii. Measurable, behaviorally-stated objectives that correspond to those goals or objectives previously identified on the required plan of service. (7-1-11)

iv. Written instructions to the staff that may include curriculum, interventions, task analyses, activity schedules, type and frequency of reinforcement and data collection including probe, directed at the achievement of each objective. These instructions must be individualized and revised as necessary to promote participant progress toward the stated objective. (7-1-11)

v. Identification of the type of environment(s) and specific location(s) where services will be provided. (7-1-11)

vi. A description of the evidence-based treatment approach used for the service provided. (7-1-11)

vii. When the child has a current positive behavior support plan, it must be incorporated into the program implementation plan. (7-1-11)

viii. When interdisciplinary training is provided, identification of the type of interdisciplinary training and the objectives related to the training must be included on the program implementation plan. (7-1-11)

ix. Target date for completion, not to exceed one (1) year. (7-1-11)

x. The program implementation plan must be reviewed and approved by the **DDA** clinical supervisor, as indicated by signature, credential, and date on the plan. (7-1-11)(    )

**04. Reporting Requirements.** The clinical supervisor must complete, at a minimum, six- (6) month and annual provider status reviews for habilitative intervention and family training services provided. These provider status reviews must be completed more frequently when so required on the plan of service. (7-1-11)

**a.** Documentation of the six (6) month and annual reviews must be submitted to the plan developer. (7-1-11)

**b.** The provider must use Department-approved forms for provider status reviews. (7-1-11)

**05. Provider Responsibility for Notification.** It is the responsibility of the service provider to notify the plan developer when any significant changes in the participant's condition, as defined by the family-centered planning team, are noted during service delivery. Such notification will be documented in the service record. (7-1-11)

**06. Records Maintenance.** When a participant leaves the waiver services program, the records will be retained by the Department as part of the participant's closed case record. Provider agencies will be responsible to retain their participant's records for five (5) years following the date of service. (7-1-11)

**685. CHILDREN'S WAIVER SERVICES: PROVIDER QUALIFICATIONS AND DUTIES.**

**01. Family Training.** Providers of family training must meet the requirements for habilitative intervention providers defined in Subsections 685.03 and 685.04 of this rule. (7-1-11)

**02. Interdisciplinary Training.** Providers of interdisciplinary training must meet the following

requirements: (7-1-11)

**a.** Occupational Therapist, as defined in Section 734 under IDAPA 16.03.09, “Medicaid Basic Plan Benefits”;  
(7-1-11)

**b.** Physical Therapist, as defined in Section 734 under IDAPA 16.03.09, “Medicaid Basic Plan Benefits”;  
(7-1-11)

**c.** Speech-Language Pathologist, as defined in Section 734 under IDAPA 16.03.09, “Medicaid Basic Plan Benefits”;  
(7-1-11)

**d.** Practitioner of the healing arts;  
(7-1-11)

**e.** Habilitative intervention provider as defined in Subsections 685.03 and 685.04 of this rule; or  
(7-1-11)

**f.** Therapeutic consultation provider as defined in Subsection 685.05 of this rule.  
(7-1-11)

**03. Habilitative Intervention.** Habilitative intervention must be provided by a DDA certified to provide both support and intervention services under IDAPA 16.03.21, “Developmental Disabilities Agencies (DDA),” and is capable of supervising the direct services provided, or by the Infant Toddler Program. Providers of habilitative intervention must meet the following minimum qualifications: ~~(7-1-11)~~(\_\_\_\_)

**a.** Must hold at least a bachelor’s degree in a human services field from a nationally-accredited university or college;  
(7-1-11)

**b.** Must be able to provide documentation of one (1) year’s supervised experience working with children with developmental disabilities. Experience must be gained through paid employment or university practicum experience or internship;  
(7-1-11)

**c.** Must complete competency coursework approved by the Department to demonstrate competencies related to the requirements to provide habilitative intervention; or  
(7-1-11)

**d.** Individuals working as Developmental Specialists for children age birth through three (3) or three (3) through 17, and individuals certified as Intensive Behavioral Intervention professionals prior to July 1, 2011, are qualified to provide habilitative intervention until June 30, 2013. The individual must meet the requirements of the Department-approved competency coursework by June 30, 2013 to maintain his certification.  
(7-1-11)

**04. Habilitative Intervention for Children Birth to Three.** In addition to the habilitative intervention qualifications listed in Subsections 685.04.a. through d. of this rule, habilitative intervention staff serving infants and toddlers from birth to three (3) years of age must have a minimum of two hundred forty (240) hours of professionally-supervised experience with young children who have developmental disabilities and one (1) of the following:  
(7-1-11)

**a.** An Elementary Education Certificate or Special Education Certificate with an Endorsement in Early Childhood Special Education; or  
(7-1-11)

**b.** A Blended Early Childhood/Early Childhood Special Education (EC/ECSE) Certificate; or  
(7-1-11)

**c.** A bachelor’s or master’s degree in special education, elementary education, speech-language pathology, early childhood education, physical therapy, occupational therapy, psychology, social work, or nursing plus a minimum of twenty-four (24) semester credits in Early Childhood/Early Childhood Special Education (EC/ECSE) from an accredited college or university. Courses taken must appear on college or university transcripts and must cover the following standards in their content:  
(7-1-11)

**i.** Promotion of development and learning for children from birth to three (3) years;  
(7-1-11)

- ii. Assessment and observation methods for developmentally appropriate assessment of young children; (7-1-11)
- iii. Building family and community relationships to support early interventions; (7-1-11)
- iv. Development of appropriate curriculum for young children, including IFSP and IEP development; (7-1-11)
- v. Implementation of instructional and developmentally effective approaches for early learning, including strategies for children who are medically fragile and their families; and (7-1-11)
- vi. Demonstration of knowledge of policies and procedures in special education and early intervention and demonstration of knowledge of exceptionalities in children's development. (7-1-11)

**d.** Electives closely related to the content under Subsection 685.04.c.iii. of this rule may be approved by the Department with a recommendation from an institution of higher education. (7-1-11)

**e.** Developmental specialists who possess a bachelor's or master's degree listed above under Subsection 685.04.c.ii. of this rule, have completed a minimum of twenty (20) semester credits in EC/ECSE, and with Department approval are serving children under three (3) years of age as of July 1, 2005, will be allowed to continue providing services in accordance with their approved, conditional hiring agreement. (7-1-11)

**f.** When the Department in its role as lead agency for implementation of Part C of the Individuals with Disabilities Education Act (IDEA) has determined that there is a shortage of such qualified personnel to meet service needs in a specific geographic area: (7-1-11)

i. The Department may approve the most qualified individuals who are demonstrating satisfactory progress toward completion of applicable course work in accordance with the individual's approved plan to meet the required standard within three (3) years of being hired. (7-1-11)

ii. Satisfactory progress will be determined on an annual review by the Department. (7-1-11)

iii. Individuals who have an approved plan for completion of twenty (20) semester credits in EC/ECSE prior to July 1, 2005, will be allowed to continue providing services so long as they demonstrate satisfactory progress on the plan and complete the requirements on the plan within three (3) years of their date of hire. (7-1-11)

**05. Therapeutic Consultation.** Therapeutic consultation may be provided by a DDA certified to provide both supports and intervention services under IDAPA 16.03.21, "Developmental Disabilities Services Agencies (DDA)," ~~or~~ by an independent Medicaid provider under agreement with the Department, or by the Infant Toddler Program. Providers of therapeutic consultation must meet the following minimum qualifications: ~~(7-1-11)~~( )

**a.** Doctoral or Master's degree in psychology, education, applied behavioral analysis, or have a related discipline with one thousand five hundred (1500) hours of relevant coursework or training, or both, in principles of child development, learning theory, positive behavior support techniques, dual diagnosis, or behavior analysis (may be included as part of degree program); and (7-1-11)

**b.** Two (2) years relevant experience in designing and implementing comprehensive behavioral therapies for children with DD and challenging behavior. (7-1-11)

**c.** Therapeutic consultation providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (7-1-11)

**d.** Therapeutic consultation providers employed by a DDA or the Infant Toddler Program must be certified in CPR and first aid in accordance with the general training requirements under IDAPA 16.03.21

“Developmental Disabilities Services (DDA).” Independent therapeutic consultation providers must be certified in CPR and first aid prior to delivering services, and must maintain current certification thereafter. (7-1-11)(    )

**06. Crisis Intervention.** Crisis intervention may be provided by a DDA certified to provide support and intervention services under IDAPA 16.03.21, “Developmental Disabilities Services (DDA),” ~~or~~ by an independent Medicaid provider under agreement with the Department, or by the Infant Toddler Program. Providers of crisis intervention must meet the following minimum qualifications: (7-1-11)(    )

**a.** Crisis Intervention professionals must meet the minimum therapeutic consultation provider qualifications described in Subsection 685.04 of this rule. (7-1-11)

**b.** Emergency intervention technician providers must meet the minimum habilitative support provider qualifications described under Subsection 665.02 of these rules. (7-1-11)

**c.** Crisis intervention providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, “Criminal History and Background Checks.” (7-1-11)

**07. Continuing Training Requirements for Professionals.** Each professional providing waiver services must complete at least twelve (12) hours of yearly training, six (6) hours of which must cover behavior methodology or interventions shown to be effective. If the individual has not completed the required training during any yearly training period, he may not provide waiver services beginning with the anniversary date of the following period, and thereafter, until the required number of training hours have accumulated. As training hours accumulate, they will be accounted first to any training-deficient prior yearly period before being applied to the current annual training period. Training hours may not be earned in a current annual training period to be applied to a future training period. (7-1-11)

**08. Requirements for Clinical Supervision.** All DDA services must be provided under the supervision of a clinical supervisor. The clinical supervisor must meet the qualifications to provide habilitative intervention as defined in this rule. Clinical supervisor(s) are professionals employed by a DDA or the Infant Toddler Program on a continuous and regularly scheduled basis. (7-1-11)(    )

**a.** The clinical supervisor is responsible for the oversight and supervision of service and support elements of the agency, including face-to-face supervision of agency staff providing direct services. (7-1-11)

**b.** The clinical supervisor must observe and review the direct services performed by all paraprofessional and professional staff on a monthly basis, or more often as necessary, to ensure staff demonstrate the necessary skills to correctly provide the services and support. (7-1-11)

**c.** Each DDA and the Infant Toddler Program must employ an adequate number of clinical supervisors to ensure quality service delivery and participant satisfaction. (7-1-11)(    )

**09. Requirements for Collaboration with Other Providers.** (7-1-12)T

**a.** Providers of waiver services must coordinate with the family-centered planning team as specified on the plan of service. When a participant has had a psychological or psychiatric assessment, the results of the psychological or psychiatric assessment must be used when developing objectives to ensure therapies provided ~~in the DDA~~ accommodate the participant’s mental health needs and to ensure that none of the therapeutic methods are contra-indicated or delivered in a manner that presents a risk to the participant’s mental health status. (7-1-11)(    )

**b.** A participant who is seeking skill training from a PSR agency provider as well as a Developmental Disabilities service provider may receive services from both if the service objectives are not duplicative, and the comprehensive diagnostic assessment described in Section 114 of these rules clearly identifies the participant’s need for skill training services that target skill deficits caused by the mental health condition. (7-1-12)T

**10. Requirements for Quality Assurance.** Providers of children’s waiver services must demonstrate high quality of services, including treatment fidelity, through an internal quality assurance review process. (7-1-11)

**11. DDA Services.** In order for a DDA to provide waiver services, the DDA must be certified to provide both support and intervention services. Each DDA is required to provide habilitative supports. When a DDA opts to provide habilitative intervention services, the DDA must also provide habilitative supports and family training. (7-1-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**721. SERVICE COORDINATION: DEFINITIONS.**

The following definitions apply for Sections 721 through 736 of these rules. (5-8-09)

**01. Agency.** An agency is a business entity that provides management, supervision, and quality assurance for service coordination and includes at least two (2) individuals, one (1) supervisor and a minimum of one (1) service coordinator. (5-8-09)

**02. Brokerage Model.** Referral or arrangement for services identified in an assessment. This model does not include the provision of direct services. (3-19-07)

**03. Conflict of Interest.** A situation in which an agency or person directly or indirectly influences, or appears to influence the direction of a participant to other services for financial gain. (5-8-09)

**04. Crisis.** An unanticipated event, circumstance or life situation that places a participant at risk of at least one (1) of the following: (3-19-07)

- a. Hospitalization; (3-19-07)
- b. Loss of housing; (3-19-07)
- c. Loss of employment or major source of income; (3-19-07)
- d. Incarceration; or (3-19-07)
- e. Physical harm to self or others, including family altercation or psychiatric relapse. (3-19-07)

**05. High Cost Services.** As used in Subsection 725.01 of these rules, high cost services are medical services that result in expensive claims payment or significant state general fund expenditure that may include: (3-19-07)

- a. Emergency room visits or procedures; (3-19-07)
- b. Inpatient medical and psychiatric services; (3-19-07)
- c. Nursing home admission and treatment; (3-19-07)
- d. Institutional care in jail or prison; (3-19-07)
- e. State, local, or county hospital treatment for acute or chronic illness; and (3-19-07)
- f. Outpatient hospital services. (3-19-07)

**06. Human Services Field.** A particular area of academic study in health care, social services, education, behavioral science or counseling. (5-8-09)

~~**07. Idaho Infant Toddler Program.** The Department's program that provides early intervention~~

~~services to eligible infants and toddlers, from birth through thirty-six (36) months.~~ (5-8-09)

~~087.~~ **Paraprofessional.** An adult with a high school diploma or equivalency who has at least twelve (12) months supervised work experience with the population to whom they will be providing services. (5-8-09)

~~098.~~ **Person-Centered Planning.** A planning process facilitated by the service coordinator that includes the participant and individuals significant to the participant, to collaborate and develop a plan based on the expressed needs and desires of the participant. For children, this planning process must involve the child's family. (5-8-09)

~~109.~~ **Practitioner of the Healing Arts.** For purposes of this rule, a nurse practitioner, physician assistant or clinical nurse specialist. (3-19-07)

~~110.~~ **Service Coordination.** Service coordination is a case management activity which assists individuals eligible for Medicaid in gaining and coordinating access to necessary care and services appropriate to the needs of the individual. Service coordination is a brokerage model of case management. (5-8-09)

~~121.~~ **Service Coordination Plan.** The service coordination plan, also known in these rules as the "plan," includes two components: (5-8-09)

a. An assessment that identifies the participant's need for service coordination as described in Section 730 of these rules; and (5-8-09)

b. A plan that documents the supports and services required to meet the service coordination needs of the participant as described in Section 731 of these rules. (5-8-09)

~~132.~~ **Service Coordination Plan Development.** An assessment and planning process performed by a service coordinator using person-centered planning principles that results in a written service coordination plan. The plan must accurately reflect the participant's need for assistance in accessing and coordinating supports and services. (5-8-09)

~~143.~~ **Service Coordinator.** An individual, excluding a paraprofessional, who provides service coordination to a Medicaid eligible participant, is employed by or contracts with a service coordination agency, and meets the training, experience, and other requirements in Section 729 of these rules. (5-8-09)

~~157.~~ **Supports.** Formal and informal services and activities that are not paid for by the Department and that enable an individual to reside safely in the setting of his choice. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**726. SERVICE COORDINATION: ELIGIBILITY: INDIVIDUALS UP TO THE AGE OF TWENTY-ONE.**

To be eligible for children's service coordination, a participant must meet the following requirements in Subsections 726.01 through 726.06~~5~~ ~~or the requirements in Subsection 726.07 of this rule.~~ Eligibility is determined initially and annually by the Department based on information provided by the service coordination agency or the family. All information necessary to make the eligibility determination must be received by the Department twenty (20) business days prior to the anticipated start date of any service coordination services. The eligibility determination must be made by the Department prior to the initiation of initial and ongoing plan development and services. (5-8-09)(    )

**01. Age.** From the age of thirty-seven (37) months through the month in which their twenty-first birthday occurs. (5-8-09)

**02. Diagnosis.** Must be identified by a physician or other practitioner of the healing arts as having one (1) of the diagnoses found in Subsections 726.03 through 726.0~~4~~~~5~~ of this rule. (5-8-09)(    )

~~03. **Developmental Delay or Disability.** A physical or mental condition which has a high probability of resulting in developmental delay or disability; or children who meet the definition of developmental disability as defined in Section 66-402, Idaho Code. (3-19-07)~~

**043. Special Health Care Needs.** Have special health care needs requiring medical and multidisciplinary habilitation or rehabilitation services to prevent or minimize a disability. (3-19-07)

**054. Serious Emotional Disturbance (SED).** Have a serious emotional disturbance (SED) with an expected duration of at least one (1) year. The following definition of the SED target populations is based on the definition of SED found in the Children's Mental Health Services Act, Section 16-2403, Idaho Code. (3-19-07)

**a.** Presence of an emotional or behavioral disorder, according to the DSM-IV-TR or subsequent revisions to the DSM, which results in a serious disability; and (3-19-07)

**b.** Requires sustained treatment interventions; and (3-19-07)

**c.** Causes the child's functioning to be impaired in thought, perception, affect, or behavior. (3-19-07)

**d.** The disorder is considered to be a serious disability if it causes substantial impairment in functioning. Functional impairment must be assessed using the Child and Adolescent Functional Assessment Scale/Preschool and Early Childhood Functional Assessment Scale (CAFAS/PECFAS). Substantial impairment requires that the child scores in the "moderate" impairment range in at least two (2) of the subscales. One (1) of the two (2) must be from the following: (5-8-09)

**i.** Self-Harmful Behavior; (3-19-07)

**ii.** Moods/Emotions; or (3-19-07)

**iii.** Thinking. (3-19-07)

**e.** A substance abuse disorder, or conduct disorder, or developmental disorder, alone, does not constitute a serious emotional disturbance, although one (1) or more of these conditions may co-exist with serious emotional disturbance. (3-19-07)

**065. Need Assistance.** Have one (1) or more of the following problems in Subsection 726.065.a. through 726.06.e. of this rule associated with their diagnosis: (5-8-09)

**a.** The condition has resulted in a level of functioning below normal age level in one (1) or more life areas such as school, child care setting, family, or community; (5-8-09)

**b.** The child is at risk of placement in a more restrictive environment or the child is returning from an out of home placement as a result of the condition; (5-8-09)

**c.** There is danger to the health or safety of the child or the parent is unable to meet the needs of the child; (5-8-09)

**d.** Further complications may occur as a result of the condition without provision of service coordination services; or (3-19-07)

**e.** The child requires multiple service providers and treatments. (3-19-07)

~~07. **Eligibility for Infants and Toddlers.** (5-8-09)~~

~~**a.** Birth through thirty-six (36) months of age; (5-8-09)~~

~~**b.** Must be identified by a physician or other practitioner of the healing arts to have a condition requiring early intervention services; and (5-8-09)~~

~~e. Must meet the eligibility requirements for early intervention services administered by the Idaho Infant Toddler Program. (5-8-09)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**729. SERVICE COORDINATION: PROVIDER QUALIFICATIONS.**

Service coordination services must be provided by an agency as defined in Section 721 of these rules. (5-8-09)

**01. Provider Agreements.** Service coordinators must be employees or contractors of an agency that has a valid provider agreement with the Department. (3-19-07)

**02. Supervision.** The agency must provide supervision to all service coordinators and paraprofessionals. The agency must clearly document: (5-8-09)

**a.** Each supervisor's ability to address concerns about the services provided by employees and contractors under their supervision, and (5-8-09)

**b.** That a paraprofessional is not a supervisor. (5-8-09)

**03. Agency Supervisor Required Education and Experience.** (5-8-09)

**a.** Master's Degree in a human services field from a nationally accredited university or college, and have twelve (12) months supervised work experience with the population being served; or (5-8-09)

**b.** Bachelor's degree in a human services field from a nationally accredited university or college, and have twenty-four (24) months supervised work experience with the population being served. (5-8-09)

**c.** Be a licensed professional nurse (RN), and have twenty-four (24) months supervised work experience with the population being served. (5-8-09)

**d.** For mental health service coordination, the supervisor must have obtained the required supervised work experience in a mental health treatment setting with the serious and persistent mentally ill population. (5-8-09)

**04. Service Coordinator Education and Experience.** (5-8-09)

**a.** Minimum of a Bachelor's degree in human services field from a nationally accredited university or college and have twelve (12) months supervised work experience with the population being served; or (5-8-09)

**b.** Be a licensed professional nurse (RN); and have twelve (12) months work experience with the population being served. (5-8-09)

**c.** When an individual meets the education or licensing requirements in Subsections 729.04.a. or 729.04.b. of this rule, but does not have the required supervised work experience, the individual must be supervised by a qualified service coordinator while gaining the required work experience. (5-8-09)

**05. Paraprofessional Education and Experience.** Under the supervision of a qualified service coordinator, a paraprofessional may be used to assist in the implementation of the plan. Paraprofessionals must have the following qualifications: (5-8-09)

**a.** Be at least eighteen (18) years of age and have a minimum of a high school diploma or equivalency; (5-8-09)

**b.** Be able to read and write at an appropriate level to process the required paperwork and forms



involved in the provision of the service; and (5-8-09)

c. Have twelve (12) months supervised work experience with the population being served. (5-8-09)

**06. Limitations on Services Delivered by Paraprofessionals.** (5-8-09)

a. Paraprofessionals must not conduct assessments, evaluations, person-centered planning meetings, ninety (90) day face-to-face contacts described in Section 728.07 of these rules, one hundred eighty (180) day progress reviews, plan development, or plan changes. Paraprofessionals cannot be identified as the service coordinator on the plan and they cannot supervise service coordinators or other paraprofessionals. (5-8-09)

b. Mental Health Service Coordination does not allow for service provision by paraprofessionals. (5-8-09)

**07. Criminal History Check Requirements.** Service coordination agencies must verify that each service coordinator and paraprofessional they employ or with whom they contract has complied with IDAPA 16.05.06, "Criminal History and Background Checks." (5-8-09)

**08. Health, Safety and Fraud Reporting.** Service coordinators are required to report any concerns about health and safety to the appropriate governing agency and to the Department. Service coordinators must also report fraud, including billing of services that were not provided, to the Department unit responsible for authorizing the service; and to the Surveillance and Utilization Review Unit (SUR) within the Department or its toll-free Medicaid fraud hotline. (3-19-07)

**09. Individual Service Coordinator Case Loads.** The total caseload of a service coordinator must assure quality service delivery and participant satisfaction. (5-8-09)

~~**10. Infant Toddler Provider Network.** Service coordination for children from birth through thirty six (36) months may only be provided through the Infant Toddler network of service coordinators. (5-8-09)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**731. SERVICE COORDINATION: PLAN DEVELOPMENT -- WRITTEN PLAN.**

The service coordination plan is developed using information collected through the assessment of the participant's service coordination needs. The plan must specify the goals and actions to address the service coordination needs of the participant identified in the assessment process. The plan must include goals developed using the person-centered planning process. (5-8-09)

**01. Plan Implementation.** The plan must identify activities required to respond to the assessed needs of the participant. (5-8-09)

**02. Plan Content.** Plans must include the following: (5-8-09)

a. A list of problems and needs identified during the assessment; (5-8-09)

b. Identification of each and any potential risk or substantiation that there are no potential risks. The plan must identify services and actions that will be implemented in case of a participant crisis situation. (5-8-09)

c. Concrete, measurable goals and objectives to be achieved by the participant; (5-8-09)

d. Reference to all services and contributions provided by the participant's supports including the actions, if any, taken by the service coordinator to develop the support system; (5-8-09)

e. Documentation of who has been involved in the service planning, including the participant's

involvement; (5-8-09)

f. Schedules for service coordination monitoring, progress review, and reassessment; (5-8-09)

g. Documentation of unmet needs and service gaps including goals to address these needs or gaps; (5-8-09)

h. References to any formal services arranged including costs, specific providers, schedules of service initiation, frequency or anticipated dates of delivery; and (5-8-09)

i. Time frames for achievement of the goals and objectives. (5-8-09)

**03. Adult Developmental Disability Service Coordination Plan.** The plan for adults with developmental disabilities must be incorporated into the participant's developmental disability plan of service identified in Section 513 of these rules. (5-8-09)

~~**04. Children Birth Through Thirty Six Months Service Coordination Plan.** For children from birth through thirty six (36) months, service coordination outcomes and objectives must be incorporated into an individualized family service plan for the child according to the Individuals with Disabilities Education Act, Part C. The plan must be developed jointly with the family and appropriate multi-disciplinary team. The team consists of the service coordinator, family members, and professionals that conduct evaluations and may include service providers. (5-8-09)~~

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

**16.03.10 - MEDICAID ENHANCED PLAN BENEFITS**

**DOCKET NO. 16-0310-1205**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is October 1, 2012.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202, 56-203, 56-250 through 56-257, and 56-260 through 56-266, Idaho Code.

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

**Wednesday - October 24, 2012  
9:00 a.m. MDT**

**Medicaid Central Office  
Conference Room East  
3232 Elder Street  
Boise, ID 83705**

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

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

The changes to these rules implement new Behavioral Care Units (BCU) in nursing facilities (NFs) and intermediate care facilities for people with intellectual disabilities (ICFs/ID). The BCUs are designed to enhance a nursing facility resident's quality of life, quality of care, and enhance their functional and cognitive status and safety. Other changes in this docket continue reimbursement methodologies and rates based on current cost reporting years.

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

These rule changes provide for the health and safety of individuals living in NFs and ICFs/ID and confer a benefit by providing quality care and services to participants living in these facilities.

**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: None.

**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(2), Idaho Code, negotiated rulemaking was not conducted because the Department has held discussions with providers and stakeholders over several years to reflect an agreed upon reimbursement for Behavioral Care Units. This rulemaking addresses the issues from those meetings.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Robert Kellerman at (208) 364-1994.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 5th day of September, 2012.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
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e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

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**THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT  
OF DOCKET NO. 16-0310-1205**

**011. DEFINITIONS: E THROUGH K.**

For the purposes of these rules, the following terms are used as defined below: (3-19-07)

**01. Educational Services.** Services which are provided in buildings, rooms or areas designated or used as a school or as educational facilities; which are provided during the specific hours and time periods in which the educational instruction takes place in the normal school day and period of time for these students; and which are included in the individual educational plan for the participant or required by federal and state educational statutes or regulations; are not related services; and such services are provided to school age individuals as defined in Section 33-201, Idaho Code. (3-19-07)

**02. Eligibility Rules.** IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children," and IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)." (3-19-07)

**03. Emergency Medical Condition.** A medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, that a prudent lay person, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in the following: (3-19-07)

**a.** Placing the health of the individual, or, with respect to a pregnant woman, the health of the woman or unborn child, in serious jeopardy. (3-19-07)

**b.** Serious impairment to bodily functions. (3-19-07)

**c.** Serious dysfunction of any bodily organ or part. (3-19-07)

**04. Enhanced Plan.** The medical assistance benefits included under this chapter of rules. (3-19-07)

**05. EPSDT.** Early and Periodic Screening Diagnosis and Treatment. (3-19-07)

**06. Equity.** The net book value of all tangible and intangible assets less the recorded value of all liabilities, as recognized and measured in conformity with generally accepted accounting principles. (3-19-07)

**07. Facility.** Facility refers to a hospital, nursing facility, or an intermediate care facility for persons with intellectual disabilities. (3-19-07)

**a.** “Free-standing and Urban Hospital-based Behavioral Care Unit” means the same as Subsection 011.07.b. or 011.07.h. of this rule, and qualifies as a behavioral care unit nursing facility provider described in Section 266 of these rules. (10-1-12)T

**b.** “Free-standing Nursing Facility” means a nursing facility that is not owned, managed, or operated by, nor is otherwise a part of a licensed hospital. (3-19-07)

**c.** “Intermediate Care Facility for Persons with Intellectual Disabilities (ICF/ID)” means an entity as defined in Subsection 011.2930 in this rule. (~~3-19-07~~)(10-1-12)T

**d.** “Nursing Facility (NF)” means a facility licensed as a nursing facility and federally certified to provide care to Medicaid and Medicare patients. (3-19-07)

**e.** “Rural Hospital-based Provider” means a hospital-based nursing facility not located within a metropolitan statistical area (MSA) as defined by the United States Bureau of the Census. (10-1-12)T

**f.** “Rural Hospital-based Behavioral Care Unit” means the same as Subsection 011.07.e., and qualifies as a behavioral care unit nursing facility provider described in Section 266 of these rules. (10-1-12)T

**g.** “Skilled Nursing Facility” means a nursing facility licensed by the Department to provide twenty-four (24) hour skilled nursing services and federally certified as a “Nursing Facility” under Title XVIII. (3-19-07)

**h.** “Urban Hospital-~~b~~ased Nursing Facility~~s~~” means a hospital-based nursing facility~~s~~ located within a metropolitan statistical area (MSA) as defined by the United States Bureau of the Census. (~~3-19-07~~)(10-1-12)T

**08. Fiscal Intermediary Agency.** An entity that provides services that allow the participant receiving personal assistance services, or his designee or legal representative, to choose the level of control he will assume in recruiting, selecting, managing, training, and dismissing his personal assistant regardless of who the employer of record is, and allows the participant control over the manner in which services are delivered. (5-8-09)

**09. Fiscal Year.** An accounting period that consists of twelve (12) consecutive months. (3-19-07)

**10. Forced Sale.** A forced sale is a sale required by a bankruptcy, foreclosure, the provisions of a will or estate settlement pursuant to the death of an owner, physical or mental incapacity of an owner which requires ownership transfer to existing partner or partners, or a sale required by the ruling of a federal agency or by a court order. (3-19-07)

**11. Funded Depreciation.** Amounts deposited or held which represent recognized depreciation. (3-19-07)

**12. Generally Accepted Accounting Principles (GAAP).** A widely accepted set of rules, conventions, standards, and procedures for reporting financial information as established by the Financial Standards Accounting Board. (3-19-07)

**13. Goodwill.** The amount paid by the purchaser that exceeds the value of the net tangible assets. The value of goodwill is derived from the economic benefits that a going concern may enjoy, as compared with a new one, from established relations in the related markets, with government departments and other noncommercial bodies and with personal relationships. These intangible assets cannot be separated from the business and sold as can plant and equipment. Under the theory that the excess payment would be made only if expected future earnings justified it, goodwill is often described as the price paid for excess future earnings. The amortization of goodwill is a nonallowable, nonreimbursable expense. (3-19-07)

**14. Healthy Connections.** The primary care case management model of managed care under Idaho Medicaid. (3-19-07)

**15. Historical Cost.** The actual cost incurred in acquiring and preparing an asset for use, including

- feasibility studies, architects' fees, and engineering studies. (3-19-07)
- 16. ICF/ID Living Unit.** The physical structure that an ICF/ID uses to house patients. (3-19-07)
- 17. Improvements.** Improvements to assets which increase their utility or alter their use. (3-19-07)
- 18. Indirect Care Costs.** The following costs either directly coded to the nursing facility or allocated to the nursing facility through the Medicare step-down process described in the PRM: (3-19-07)
- a.** Activities; (3-19-07)
  - b.** Administrative and general care costs; (3-19-07)
  - c.** Central service and supplies; (3-19-07)
  - d.** Dietary (non-"raw food" costs); (3-19-07)
  - e.** Employee benefits associated with the indirect salaries; (3-19-07)
  - f.** Housekeeping; (3-19-07)
  - g.** Laundry and linen; (3-19-07)
  - h.** Medical records; (3-19-07)
  - i.** Other costs not included in direct care costs, or costs exempt from cost limits; and (3-19-07)
  - j.** Plant operations and maintenance (excluding utilities). (3-19-07)
- 19. Inflation Adjustment.** The cost used in establishing a nursing facility's prospective reimbursement rate is indexed forward from the midpoint of the cost report period to the midpoint of the rate year using the inflation factor plus one percent (+1%) per annum. (3-19-07)
- 20. Inflation Factor.** For use in establishing nursing facility prospective rates, the inflation factor is the Skilled Nursing Facility Market Basket as established by Data Resources, Inc. (DRI), or its successor. If subsequent to the effective date of these rules, Data Resources, Inc., or its successor develops an Idaho-specific nursing facility index, it will be used. The Department is under no obligation to enter into an agreement with DRI or its successor to have an Idaho-specific index established. The national index is used when there is no state or regional index. (3-19-07)
- 21. In-State Care.** Medical services provided within the Idaho border or in counties bordering Idaho are considered to be in-state, excluding long term care. (3-19-07)
- 22. Inspection of Care Team (IOCT).** An interdisciplinary team which provides inspection of care in intermediate care facilities for persons with intellectual disabilities approved by the Department as providers of care for eligible medical assistance participants. Such a team is composed of: (3-19-07)
- a.** At least one (1) registered nurse; and (3-19-07)
  - b.** One (1) Qualified Intellectual Disabilities Professional (QIDP); and when required, one (1) of the following: (3-19-07)
    - i.** A consultant physician; or (3-19-07)
    - ii.** A consultant social worker; or (3-19-07)
    - iii.** When appropriate, other health and human services personnel responsible to the Department as

employees or consultants. (3-19-07)

**23. Instrumental Activities of Daily Living (IADL).** Those activities performed in supporting the activities of daily living, including, but not limited, to managing money, preparing meals, shopping, light housekeeping, using the telephone, or getting around in the community. (3-19-07)

**24. Interest.** The cost incurred for the use of borrowed funds. (3-19-07)

**25. Interest on Capital Indebtedness.** The cost incurred for borrowing funds used for acquisitions of capital assets, improvements, etc. These costs are reported under property costs. (3-19-07)

**26. Interest on Working Capital.** The costs incurred for borrowing funds which will be used for “working capital” purposes. These costs are reported under administrative costs. (3-19-07)

**27. Interest Rate Limitation.** The interest rate allowed for working capital loans and for loans for major movable equipment for ICF/ID facilities is the prime rate as published in the western edition of the Wall Street Journal or successor publication, plus one percent (+1%) at the date the loan is made. (3-19-07)

**28. Interim Reimbursement Rate (IRR).** A rate paid for each Medicaid patient day which is intended to result in total Medicaid payments approximating the amount paid at audit settlement. The interim reimbursement rate is intended to include any payments allowed in excess of the percentile cap. (3-19-07)

**29. Intermediary.** Any organization that administers the Title XIX and Title XXI program; in this case the Department of Health and Welfare. (3-19-07)

**30. Intermediate Care Facility for Persons with Intellectual Disabilities (ICF/ID).** An entity licensed as an ICF/ID and federally certified to provide care to Medicaid and Medicare participants with developmental disabilities. (3-19-07)

**31. Keyman Insurance.** Insurance on owners or employees with extraordinary talents in which the direct or indirect beneficiary is the facility or its owners. Premiums related to keyman insurance are not allowable. (3-19-07)

**012. DEFINITIONS: L THROUGH O.**  
For the purposes of these rules, the following terms are used as defined below: (3-19-07)

**01. Lease.** A contract arrangement for use of another’s property, usually for a specified time period, in return for period rental payments. (3-19-07)

**02. Leasehold Improvements.** Additions, adaptations, corrections, etc., made to the physical components of a building or construction by the lessee for his use or benefit. Such additions may revert to the owner. Such costs are usually capitalized and amortized over the life of the lease. (3-19-07)

**03. Legal Representative.** A parent with custody of a minor child, one who holds a legally-executed and effective power of attorney for health decisions, or a court-appointed guardian whose powers include the power to make health care decisions. (3-19-07)

**04. Level of Care.** The classification in which a participant is placed, based on severity of need for institutional care. (3-19-07)

**05. Licensed Bed Capacity.** The number of beds which are approved by the Licensure and Certification Agency for use in rendering patient care. (3-19-07)

**06. Licensed, Qualified Professionals.** Individuals licensed, registered, or certified by national certification standards in their respective discipline, or otherwise qualified within the state of Idaho. (3-19-07)

**07. Lower of Cost or Charges.** Payment to providers (other than public providers furnishing such

services free of charge or at nominal charges to the public) is the lesser of the reasonable cost of such services or the customary charges with respect to such services. Public providers which furnish services free of charge or at a nominal charge are reimbursed fair compensation; which is the same as reasonable cost. (3-19-07)

**08. MAI Appraisal.** An appraisal which conforms to the standards, practices, and ethics of the American Institute of Real Estate Appraisers and is performed by a member of the American Institute of Real Estate Appraisers. (3-19-07)

**09. Major Movable Equipment.** Major movable equipment means such items as beds, wheelchairs, desks, furniture, vehicles, etc. The general characteristics of this equipment are: (3-19-07)

- a.** A relatively fixed location in the building; (3-19-07)
- b.** Capable of being moved, as distinguished from building equipment; (3-19-07)
- c.** A unit cost of five thousand dollars (\$5000) or more; (3-19-07)
- d.** Sufficient size and identity to make control feasible by means of identification tags; and (3-19-07)
- e.** A minimum life of three (3) years. (3-19-07)

**10. Medical Assistance.** Payments for part or all of the cost of services funded by Titles XIX or XXI of the federal Social Security Act, as amended. (3-19-07)

**11. Medicaid.** Idaho's Medical Assistance Program. (3-19-07)

**12. Medicaid Related Ancillary Costs.** For the purpose of these rules, those services provided in nursing facilities considered to be ancillary by Medicare cost reporting principles. Medicaid related ancillary costs will be determined by apportioning direct and indirect costs associated with each ancillary service to Medicaid residents by dividing Medicaid charges into total charges for that service. The resulting percentage, when multiplied by the ancillary service cost, will be considered Medicaid related ancillaries. (3-19-07)

**13. Medical Care Treatment Plan.** The problem list, clinical diagnosis, and treatment plan of care administered by or under the direct supervision of a physician. (3-19-07)

**14. Medical Necessity (Medically Necessary).** A service is medically necessary if: (3-19-07)

**a.** It is reasonably calculated to prevent, diagnose, or treat conditions in the participant that endanger life, cause pain, or cause functionally significant deformity or malfunction; and (3-19-07)

**b.** There is no other equally effective course of treatment available or suitable for the participant requesting the service which is more conservative or substantially less costly. (3-19-07)

**c.** Medical services must be of a quality that meets professionally recognized standards of health care and must be substantiated by records including evidence of such medical necessity and quality. Those records must be made available to the Department upon request. (3-19-07)

**15. Medical Supplies.** Items excluding drugs and biologicals and equipment furnished incident to a physician's professional services commonly furnished in a physician's office or items ordered by a physician for the treatment of a specific medical condition. These items are generally not useful to an individual in the absence of an illness and are consumable, nonreusable, disposable, and generally have no salvage value. Surgical dressings, ace bandages, splints and casts, and other devices used for reduction of fractures or dislocations are considered supplies. (3-19-07)

**16. Medicare Savings Program.** The program formerly known as "Buy-In Coverage," where the state pays the premium amount for participants eligible for Medicare Parts A and B of Title XVIII. (3-19-07)



**17. Minimum Data Set (MDS).** A set of screening, clinical, and functional status elements, including common definitions and coding categories, that forms the foundation of the comprehensive assessment for all residents of long term care facilities certified to participate in Medicare or Medicaid. The version of the assessment document used for rate setting is version 2.0. Subsequent versions of the MDS will be evaluated and incorporated into rate setting as necessary. (3-19-07)

**18. Minor Movable Equipment.** Minor movable equipment includes such items as wastebaskets, bedpans, syringes, catheters, silverware, mops, buckets, etc. Oxygen concentrators used in lieu of bottled oxygen may, at the facility's option, be considered minor movable equipment with the cost reported as a medical supply. The general characteristics of this equipment are: (3-19-07)

- a. No fixed location and subject to use by various departments of the provider's facility; (3-19-07)
- b. Comparatively small in size and unit cost under five thousand dollars (\$5000); (3-19-07)
- c. Subject to inventory control; (3-19-07)
- d. Fairly large quantity in use; and (3-19-07)
- e. A useful life of less than three (3) years. (3-19-07)

**19. Necessary.** The purchase of goods or services that is required by law, prudent management, and for normal, efficient and continuing operation of patient related business. (3-19-07)

**20. Negotiated Service Agreement (NSA).** The plan reached by the resident and his representative, or both, and the facility or certified family home based on the assessment, physician or authorized provider's orders, admissions records, and desires of the resident. The NSA must outline services to be provided and the obligations of the facility or certified family home and the resident. (3-19-07)

**21. Net Book Value.** The historical cost of an asset, less accumulated depreciation. (3-19-07)

**22. New Bed.** Subject to specific exceptions stated in these rules, a bed is considered new if it adds to the number of beds for which a nursing facility is licensed on or after July 1, 1999. (3-19-07)

**23. Nominal Charges.** A public provider's charges are nominal where aggregate charges amount to less than one-half (1/2) of the reasonable cost of the related services. (3-19-07)

**24. Nonambulatory.** Unable to walk without assistance. (3-19-07)

**25. Nonprofit Organization.** An organization whose purpose is to render services without regard to gains. (3-19-07)

**26. Normalized Per Diem Cost.** Refers to direct care costs that have been adjusted based on the nursing facility's case mix index for purposes of making the per diem cost comparable among nursing facilities. Normalized per diem costs are calculated by dividing the nursing facility's direct care per diem costs by its nursing facility-wide case mix index, and multiplying the result by the statewide average case mix index. (3-19-07)

**27. Nurse Practitioner.** A licensed professional nurse (RN) who meets all the applicable requirements to practice as nurse practitioner under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." (3-19-07)

**28. Nursing Facility (NF).** An institution, or distinct part of an institution, which is primarily engaged in providing skilled nursing care and related services for participants. It must be an entity licensed as a nursing facility and federally certified to provide care to Medicaid and Medicare participants. The participant must require medical or nursing care, or rehabilitation services for injuries, disabilities, or illness. (3-19-07)

**29. Nursing Facility Inflation Rate.** See the definition of Inflation Factor in Subsection 011.4720 of

these rules.

~~(3-19-07)~~(10-1-12)T

**30. Ordinary.** Ordinary means that the costs incurred are customary for the normal operation of the business. (3-19-07)

**31. Out-of-State Care.** Medical service that is not provided in Idaho or bordering counties is considered out-of-state. Bordering counties outside Idaho are considered out-of-state for the purpose of authorizing long term care. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**257. NURSING FACILITY: DEVELOPMENT OF THE RATE.**

Nursing facility rates are prospective, with new rates effective July 1st of each year, and are recalculated annually with quarterly adjustments for case mix. The rate for a nursing facility is the sum of the cost components described in Subsection 257.04 through 257.08 of this rule. In no case will the rate be set higher than the charge for like services to private pay patients in effect for the period for which payment is made as computed by the lower of costs or customary charges. For the rate ~~period year~~ of July 1, 2011, through June 30, 2012, rates will be calculated using audited cost reports ended in calendar year 2010 with no allowance for inflation to the rate ~~period year~~ of July 1, 2011, through June 30, 2012. For the rate years beginning July 1, 2012, and annually thereafter, rates will be calculated using audited cost reports for periods ended in the preceding calendar year with no allowance for inflation to the prospective rate period. ~~(3-21-12)~~(10-1-12)T

**01. Applicable Case Mix Index (CMI).** The Medicaid CMI used in establishing each facility's rate is calculated based on the most recent assessment for each Medicaid resident in the nursing facility on the first day of the month of the preceding quarter (for example, assessments as of April 1 are used to establish the CMI needed to establish rates for the quarter beginning July 1st). Facility-wide CMI is calculated based on the most recent assessment for all residents in the nursing facility. The CMI is recalculated quarterly and each nursing facility's rate is adjusted accordingly. A facility-wide CMI is also established each year by averaging four (4) calendar quarter CMIs for the cost reporting period from historical data to represent each fiscal quarter in the cost reporting period (for example, an October 1 CMI would represent the fiscal quarter ended September 30th). (3-19-07)

**02. Applicable Cost Data.** The cost data used in establishing the cost components of the rate calculation are from the audited or unaudited cost report which ended during the previous calendar year (for example, cost reports ending during the period from January 1, 1998 - December 31, 1998 are used in setting rates effective July 1, 1999). The draft audit of a cost report submitted by a facility will be issued by the Department no later than five (5) months after the date all information required for completion of the audit is filed with the Department. (3-19-07)

**03. Interim Rates.** Nursing facilities with unaudited cost reports are given an interim rate established by the Department until a rate is calculated based on an audited cost report. When audited data are available, a retroactive adjustment to the payment rate is made through the calculation of the finalized rate. (3-19-07)

**04. Direct Care Cost Component.** The direct care cost component of a nursing facility's rate is determined as follows: (3-19-07)

**a.** The direct care per diem cost limit applicable to the rate period for a nursing facility type (free-standing and urban hospital-based nursing facility, ~~or~~ rural hospital-based nursing facility, free-standing and urban hospital-based behavioral care unit, or rural hospital-based behavioral care unit) is identified. The identified direct care cost limit is divided by the statewide average CMI for the cost reporting period, and then multiplied by the nursing facility's facility-wide CMI for the cost reporting period to derive the adjusted direct care per diem cost limit. ~~(3-19-07)~~(10-1-12)T

**b.** The adjusted direct care per diem cost limit is compared to the nursing facility's inflated direct care per diem costs. The lower of the two (2) amounts is then case mix adjusted. (3-19-07)

i. If the adjusted direct care per diem cost limit is lower, the adjusted limit is divided by the nursing facility's facility-wide CMI for the cost reporting period, and then multiplied by the nursing facility's most recent quarterly Medicaid CMI for the rate period to arrive at the direct care cost component. (3-19-07)

ii. If the inflated direct care per diem costs are lower, these costs, minus raw food and Medicaid related ancillary costs, are divided by the nursing facility's facility-wide CMI for the cost reporting period, then multiplied by the nursing facility's most recent quarterly Medicaid CMI for the rate period. Raw food and Medicaid related ancillary costs are then added back to arrive at the direct care cost component. (3-19-07)

**05. Indirect Care Cost Component.** The indirect care cost component of a facility's rate is the lesser of the facility's inflated indirect care per diem costs, or the indirect per diem cost limit for that type of provider -- free-standing and urban hospital-based nursing facilities including behavioral care unit nursing facility providers, or rural hospital-based nursing facilities including behavioral care unit nursing facility providers. ~~(3-19-07)~~(10-1-12)T

**06. Costs Exempt From Limitation.** Costs exempt from cost limits are property taxes, property insurance, utilities and costs related to new legal mandates as defined in Section 264 of these rules. (3-19-07)

**07. Property Reimbursement.** The property reimbursement component is calculated in accordance with Section 275 and Subsection 240.19 of these rules. (3-19-07)

**08. Revenue Offset.** Revenues from products or services provided to nonpatients will be offset from the corresponding rate component(s) as described in Section 257 of ~~these~~ this rules. ~~(3-19-07)~~(10-1-12)T

**258. NURSING FACILITY: COST LIMITS BASED ON COST REPORT.**

Each July 1st cost limitations will be established for nursing facilities based on the most recent audited cost report with an end date of June 30th of the previous year or before. Calculated limitations will be effective for a one (1) year period, from July 1 through June 30th of each year, which is the rate year. For the rate ~~period~~ year of July 1, 2011, through June 30, 2012, the direct and indirect cost limits were calculated using the most recent ~~finalized~~ audited cost reports adjusted to the midpoint of the cost reporting year's end in calendar year 2010, to allow for no inflation to the rate year. For rates years beginning July 1, 2012, and annually thereafter, the direct and indirect cost limits will be calculated using the most recent audited cost reports adjusted to the midpoint of each provider's cost reporting year that is used to set the July 1 rate, to allow for no inflation to the rate year. ~~(3-21-12)~~(10-1-12)T

**01. Percentage Above Bed-Weighted Median.** (10-1-12)T

**a.** Prior to establishing the first "shadow rates" at July 1, 1999, the estimated Medicaid payments under the previous retrospective system for the year period from July 1, 1999, through June 30, 2000, will be calculated. This amount will then be used to model the estimated payments under the case mix system set forth in Sections 255 through 257 of these rules. The percentages above the bed-weighted median, for direct and indirect costs, will be established at a level that approximates the same amount of Medicaid expenditures as would have been produced by the retrospective system. The percentages will also be established to approximate the same distribution of total Medicaid dollars between the hospital-based and freestanding nursing facilities as existed under the retrospective system. (10-1-12)T

**b.** Once the percentage is established, it will be used to calculate the limit by multiplying the bed-weighted median per diem direct cost times the calculated percentage for that class of provider. There will be a direct and indirect percentage that is applied to freestanding and urban hospital-based nursing facilities, and a higher direct and indirect percentage that is applied to rural hospital-based nursing facilities. (10-1-12)T

**c.** Beginning with rates effective October 1, 2012, additional direct care cost limit categories will be added for free-standing and urban hospital-based behavioral care units and rural hospital-based behavioral care units. Percentages previously established for other provider class types not considered a behavioral care unit will remain unchanged. Once established, these percentages will remain in effect for future rate setting periods. ~~(3-19-07)~~(10-1-12)T

**02. Direct Cost Limits.** The direct cost limitation will be calculated by indexing the selected cost data

forward by the inflation adjustment from the midpoint of the cost report period to the midpoint of the period for which the limit will be applicable. The indexed per diem costs will then be normalized and arrayed from high to low, with ~~freestanding and hospital-based~~ all nursing facilities included in the same array, and the bed-weighted median will be computed. ~~(3-19-07)~~(10-1-12)T

**03. Indirect Cost Limits.** The indirect cost limitation will be calculated by indexing the selected cost data forward by the inflation adjustment from the midpoint of the cost report period to the midpoint of the period for which the limit will be applicable. The indexed per diem costs will then be arrayed, with ~~freestanding and hospital-based~~ all nursing facilities included in the same array, and the bed-weighted median will be computed. ~~(3-19-07)~~(10-1-12)T

**04. Limitation on Increase or Decrease of Cost Limits.** Increases in the direct and indirect cost limits will be determined by the limitations calculated in the most recent base year, indexed forward each year from the midpoint of the base year to the midpoint of the rate year by the inflation factor plus one percent (1%) per annum. The calculated direct and indirect cost limits will not be allowed to decrease below the limitations effective in the base year. The maximum rate of growth on the cost limits, and the minimum cost limitation, will be examined by the oversight committee periodically to determine which factors to use in the calculation of the limitations effective in the new base year and forward. (3-29-10)

**05. Costs Exempt From Limitations.** Costs exempt from limitations include property taxes, property insurance, and utilities. These costs will be reimbursed on a per diem basis and will not be included in the calculation of the direct or indirect care component. However, property taxes and property insurance will be subject to minimum occupancy levels as defined in Section 278 of these rules. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

~~266.—269.~~ ~~(RESERVED)~~

**266. NURSING FACILITY: BEHAVIORAL CARE UNIT (BCU) AND RATE STRUCTURE.**  
Effective October 1, 2012, the additional direct care costs associated with BCU residents will remain in direct care costs subject to the direct care cost limitation. Those qualifying BCU nursing facility providers may have a direct care cost limitation higher than non-BCU nursing facility providers. BCU nursing facility providers will not receive an increased indirect care cost limitation. (10-1-12)T

**01. Determination.** The BCU must have a qualifying program and have been providing care in the BCU to behavior residents as of July 1, 2011. Nursing facility providers that meet the BCU criteria will have BCU direct care costs included in direct care costs subject to the cost limit. The direct care cost limitation may be higher than a non-BCU nursing facility. (10-1-12)T

**02. BCU Routine Customary Charge.** If the cost to operate a BCU is included in a nursing facility's rate calculation, the nursing facility must report its usual and customary charge for semi-private rooms in both the BCU and general nursing facility. A weighted average routine customary charge is computed to represent the composite of all Medicaid nursing facility residents in the nursing facility based on the type of rooms they occupy, including the BCU. (10-1-12)T

**03. Prospective Rate Setting.** Beginning October 1, 2012, the direct care cost limit calculation for any special rate revenue offsets in the prior year related to one-to-one (1:1) staffing ratios, BCU, or increased staffing, will be reversed before calculating the cost limit. This revenue offset reversal excludes revenues related to special rate add-ons for ventilator-dependent or tracheostomy services. Rates will be calculated using the cost report ended in the calendar year prior to each July 1 rate setting period with the BCU's direct care costs included in direct care costs subject to the higher BCU cost limit. (10-1-12)T

**04. Rates Effective October 1, 2012.** For rates effective October 1, 2012, a nursing facility designated as a BCU during each nursing facility provider's cost report ended in calendar year 2011 must be identified.

- (10-1-12)T
- a.** Days approved for a BCU during the 2011 cost report year must be identified. (10-1-12)T
- b.** To qualify as a BCU, Medicaid BCU days identified in Subsection 266.04.a. of this rule, are divided by total days in the nursing facility and that calculation must equal or exceed a minimum of fifteen percent (15%). (10-1-12)T
- 05. Annual Rates Beginning July 1, 2013.** For annual rates beginning July 1, 2013, once a rate has been set as provided in Subsection 266.03 of this rule, the following process will be used to determine BCU eligibility. A nursing facility must apply for BCU eligibility on an annual basis. Eligibility is determined by: (10-1-12)T
- a.** BCU days, regardless of payer source, are divided by the total occupied days in the nursing facility and that calculation must equal or exceed a minimum of twenty percent (20%). (10-1-12)T
- b.** The BCU nursing facility provider must provide a list of all residents they believe were qualified for BCU status for the previous year; (10-1-12)T
- i.** The Department will select a sample of Idaho Medicaid participants from the submitted list. The nursing facility provider must send the MDS for each selected sample participant, along with related census information, and other requested information to the Department. (10-1-12)T
- ii.** The Department will review this information to determine that the participants meet the requirements of Subsection 266.06 of this rule and calculate the percentage of BCU days to the total occupied days in the facility to determine whether the facility meets the BCU eligibility requirement in Subsection 266.05.a. of this rule. (10-1-12)T
- 06. Participant Characteristics.** All participants in a BCU must meet the criteria for nursing facility level of care, and have the following characteristics as provided in the participants' MDS assessment: (10-1-12)T
- a.** Medically based behavior disorder which causes a significantly diminished capacity for judgment, retention of information, or decision making skills, or medically based mental health disorder of diagnosis and has a high level resource use; and (10-1-12)T
- b.** Must have a history or demonstrate need for additional resources to provide for disruptive behaviors requiring enhanced resource use from nursing facility staff, evidenced by one (1) or more of the following: (10-1-12)T
- i.** Wandering behaviors; (10-1-12)T
- ii.** Verbally abusive behaviors; (10-1-12)T
- iii.** Physically abusive behaviors; (10-1-12)T
- iv.** Socially inappropriate or disruptive behaviors, such as verbal or vocal symptoms like disruptive sounds, noises, screaming, physical symptoms like self-abusive acts, public sexual behavior or disrobing in public, smearing or throwing food or bodily wastes, hoarding, rummaging through belongings of other residents; (10-1-12)T
- v.** Behaviors that resist care; or (10-1-12)T
- vi.** Does not meet unit discharge criteria outlined in Subsection 266.13 of this rule. (10-1-12)T
- c.** A behavior baseline profile must be established for each participant; (10-1-12)T
- d.** A behavior intervention program must be in place for each participant, designed to reduce or control the inappropriate behaviors to enhance the participant's quality of life, functional and cognitive status or

safety. (10-1-12)T

**07. BCU Annual Renewal.** The facility must request continuation in the BCU program annually. The request must include the following: (10-1-12)T

**a.** A description of the facility's program that includes the required components in Subsections 266.05 and 266.06 of this rule; and (10-1-12)T

**b.** A profile of the types of behavior of participants served and any restrictions the facility has adopted. (10-1-12)T

**08. Administrative and Staffing Requirements.** (10-1-12)T

**a.** Staffing must be at a level necessary for the facility to be able to provide direct supervision of participants as needed. (10-1-12)T

**b.** Psychiatrist or physician extender must be available to consult as needed for initial and on-going assessments and for 24/7 emergency services. Consultants must make at least quarterly site visits and be available to participate in Behavior Management Team meetings as needed. (10-1-12)T

**c.** Licensed Master Social Worker (LMSW), Licensed Professional Counselor (LPC), or Licensed Social Worker (LSW) with behavioral experience must be available to consult as needed, make periodic site visits and to participate in the assessment, behavioral intervention planning, behavioral intervention implementation and Behavior Management Team meetings as needed. (10-1-12)T

**09. Behavior Management Team Meetings.** Weekly behavior management team meetings must be conducted that include but are not limited to psychiatrist, physician, facility social services staff, behavior program director, director of nursing services, dietary manager, recreational services or activity director, and selected primary care staff. Physicians, psychiatrists, social services consultants and other off-site specialists are included as needed, and may participate in person or by telephone. (10-1-12)T

**10. Staff Training.** Behavioral training classes for staff that are tailored to the needs of the positions involved, and includes appropriate information on: (10-1-12)T

**a.** Assessment and prevention; (10-1-12)T

**b.** Medication and side effects; (10-1-12)T

**c.** Effects of disease process on mood state; (10-1-12)T

**d.** Safety techniques; (10-1-12)T

**e.** Deflecting aggression or target behaviors; (10-1-12)T

**f.** Comprehensive environmental intervention; (10-1-12)T

**g.** Stress management; and (10-1-12)T

**h.** Documentation and charting. (10-1-12)T

**11. Yearly Training.** Yearly training for behavioral interventions and safety techniques is required for staff. (10-1-12)T

**12. Care Planning, Behavioral Management, and Programming.** Individualized care plans, based on assessments of cognitive and functional abilities, along with behavior analysis to create a strategy for prevention and intervention that are documented for each participant and include the following: (10-1-12)T

**a.** Thirty (30) day assessments of progress made by each participant, must be completed, documented, and reviewed by the facility's behavioral management team. (10-1-12)T

**b.** Comprehensive behavior monitoring techniques that track and trend the intensity and daily occurrence of behaviors, successful interventions, and behavior modification techniques used must be documented for each participant. (10-1-12)T

**c.** Attempts to involve family and responsible parties with the participant through visits, training, outings, or appropriate communications, must be documented. (10-1-12)T

**d.** Recreational and activity programming must be targeted to specific needs of each individual participant and the behaviors each participant exhibits must be documented. (10-1-12)T

**e.** Integration for appropriate social interactions must be used when appropriate for each individual participant. (10-1-12)T

**f.** Community for transition must be used when appropriate for each individual participant. (10-1-12)T

**g.** Attempts to meet discharge criteria must be documented for each individual participant when progress shows a decline in the need for special care programming. (10-1-12)T

**13. Discharge Criteria.** The BCU must maintain and document discharge criteria as follows: (10-1-12)T

**a.** Document improvement in ability to function that would enable transfer to less-restrictive environment. (10-1-12)T

**b.** Document lack of benefit from specialized programs offered in BCU. (10-1-12)T

**c.** Document consistent refusals by participant or responsible party to allow interventions that are determined to be helpful. (10-1-12)T

**d.** Document acute danger to self or others that cannot be managed by staffing in the BCU. (10-1-12)T

**e.** Document acute physical illness or complications requiring a higher level of medical care than available in the facility. (10-1-12)T

**f.** A nursing facility provider that is approved for one-hundred percent (100%) behavioral participants will be exempt for the discharge criteria provided in Subsections 266.13.a. through 266.13.e. of this rule. (10-1-12)T

**14. Termination of BCU Status.** If a provider opts to leave the BCU program, the Department must be notified so the direct care cap can be adjusted to that of a non-BCU provider, beginning with the next rate year. (10-1-12)T

**15. Refusal of Admissions.** These rules do not preclude a nursing facility from refusing to admit a participant whose needs cannot be met by the nursing facility. (10-1-12)T

**267. NURSING FACILITY: NEW BEHAVIORAL CARE UNIT (BCU).**

**01. Criteria to Qualify as a New BCU.** A nursing facility provider must meet the following criteria to qualify as a new BCU nursing facility provider: (10-1-12)T

**a.** BCU days from the cost report period, regardless of payer source, are divided by the total occupied days in the nursing facility, and that calculation must equal or exceed a minimum of twenty percent (20%). (10-1-12)T

b. A qualifying cost report must demonstrate that the nursing facility provider has a qualifying program in place with residents. (10-1-12)T

02. First Cost Reporting Year. No BCU eligibility, or increased direct care cost limit will be allowed in the first cost reporting year the BCU program is added. (10-1-12)T

03. Qualifying Report in Tandem with BCU Eligibility. Once a qualifying cost report is submitted for the BCU program, and the nursing facility provider qualifies in tandem with the BCU eligibility criteria, the cost report will be used to set a prospective rate effective the following July 1 rate period with the increased direct care cost limit. (10-1-12)T

**268. NURSING FACILITY: EXISTING PROVIDER ELECTS TO ADD BEHAVIORAL CARE UNIT (BCU).**

An existing nursing facility provider that elects to add a BCU after July 1, 2011, may be deemed eligible after meeting the following requirements: (10-1-12)T

01. Qualifying Cost Report. A qualifying cost report that demonstrates a qualifying program is in place with residents and meets the criteria in Section 282 of these rules. (10-1-12)T

02. Meet Criteria for BCU. The nursing facility provider must meet the criteria for a BCU described in Section 266 of these rules. (10-1-12)T

03. BCU Payments. No BCU payments or increased direct care cost limits will be allowed in the first cost reporting year the program is added. Once a qualifying cost report is submitted, and the provider qualifies in tandem with the BCU criteria, the cost report will be used to set a prospective rate, effective with the following July 1 rate period with the increased direct care cost limit. (10-1-12)T

**269. NURSING FACILITY: NEW OWNER OF AN EXISTING NURSING FACILITY WITH A BEHAVIORAL CARE UNIT (BCU).**

01. New Owner Elects to Continue BCU. An existing nursing facility that is considered a BCU will continue to be a BCU, if the new owner elects to continue to provide these services. The new owner will receive a rate calculated according to the current change of ownership rules in Section 261 of these rules. The prior owner's cost report will be used until the new owner has a qualifying cost report. The BCU will continue to qualify for the higher direct care cost limit the previous owner was allowed. (10-1-12)T

02. New Owner Does Not Elect to Continue BCU. If the new owner does not elect to operate the BCU, the prior owner's cost report will be used. The direct care cost limit will be adjusted down to that of the non-BCU nursing facility. (10-1-12)T

**270. NURSING FACILITY: SPECIAL RATES.**

A special rate consists of a facility's daily reimbursement rate for a patient plus an add-on amount. Section 56-117, Idaho Code, provides authority for the Department to pay facilities an amount in addition to the daily rate when a patient has needs that are beyond the scope of facility services and when the cost of providing for those additional needs is not adequately reflected in the rates calculated ~~pursuant to the principles found in Section 56-265, Idaho Code.~~ This special rate add-on amount for such specialized care is in addition to any payments made in accordance with other provisions of this chapter and is excluded from the computation of payments or rates under other provisions ~~of Section 56-265, Idaho Code, and~~ in these rules. (3-19-07)(10-1-12)T

01. Determination. The Department determines to approve a special rate on a patient-by-patient basis. No rate will be allowed if reimbursement for these needs is available from a non-Medicaid source. A special rate request must be based on an identified condition that will continue for a period greater than thirty (30) days. (3-4-11)

02. Effective Date. Upon approval, a special rate is effective on the date the application was received. (3-4-11)



**03. Reporting.** Costs equivalent to payments for special rate add-on amounts must be removed from the cost components subject to limits, and be reported separately by the provider. (3-19-07)

**04. Limitation.** A special rate cannot exceed the provider's charges to other patients for similar services. (3-19-07)

**05. Prospective Rate Treatment.** Prospective treatment of special rates became effective July 1, 2000. Subsections 270.06 and 270.07 of ~~these~~ **this** rules provide clarification of how special rates are paid under the prospective payment system. ~~(3-19-07)~~(10-1-12)T

**06. Determination of Payment for Qualifying Residents.** Special rate add-on amounts are calculated using one (1) of the methods described in Subsections 270.06.a. through 270.06.d. of ~~these~~ **this** rules. ~~(3-19-07)~~(10-1-12)T

~~**a. Special Care Units.** If a facility operates a special care unit, such as a behavioral unit or a Traumatic Brain Injury (TBI) unit, reimbursement is determined as described in Subsections 270.06.a.i. through 270.06.a.v. of these rules. (3-19-07)~~

~~**i.** If the facility is below the direct care cost limit with special care unit costs included, no special rate is paid for the unit. (3-19-07)~~

~~**ii.** If the facility is over the direct care cost limit with special care unit costs included, a special rate add-on amount will be calculated. The special rate add-on amount for the unit is the lesser of the per diem amount by which direct care costs exceed the limit or a calculated add-on amount. The calculated special rate add-on is derived as follows: each Medicaid resident is assigned a total rate equal to the Medicare rate that would be paid if the resident were Medicare eligible. The resident's acuity adjusted Medicaid rate, based on each resident's individual Medicaid CMI, is subtracted from the Medicare rate. The average difference between the Medicaid and the Medicare rates for all special care unit residents is the calculated special rate add-on amount. The calculated special rate add-on amount is compared to the per diem amount by which the provider exceeds the direct care limit. The lesser of these two amounts is allowed as the special rate add-on amount for the unit. (3-19-07)~~

~~**iii.** New Unit Added After July 1, 2000. The Department must approve special rates for new special care units or increases to the number of licensed beds in an existing special care unit. Since a new unit will not have the cost history of an existing unit, the provider's relationship to the cap will not be considered in qualifying for a special rate. New units approved for special rates will have their special add-on amount calculated as the difference between the applicable Medicare price under PPS, and the acuity adjusted Medicaid rate for all unit residents as explained in Section 311.06.a.iii. of these rules. However, the average of these amounts is not limited to the amount the provider is over the direct care cost limit, as the costs of the unit are not in the rate calculation. (3-19-07)~~

~~**iv.a.** One Hundred Percent (100%) Special Care Facility Existing July 1, 2000. If on July 1, 2000, an entire facility was a special care unit which included Medicaid residents, the facility's direct care cost per diem will not be subject to the direct care cost limit. However, the direct care costs are case mix adjusted based on the ratio of the facility's Medicaid CMI for the rate period to the facility-wide CMI for the cost reporting period. (3-19-07)~~

~~**v.** Unit Routine Customary Charge. If the cost to operate a special care unit is being included in a facility's rate calculation process, the facility must report its usual and customary charge for a semi-private room in the unit on the quarterly reporting form, in addition to the semi-private daily room rate for the general nursing home population. A weighted average routine customary charge is computed to represent the composite of all Medicaid residents in the facility based on the type of rooms they occupy, including the unit. (3-19-07)~~

**b.** Equipment and Non-Therapy Supplies. Equipment and non-therapy supplies not addressed in Section 225 of these rules ~~or adequately addressed in the current RUG system~~, as determined by the Department, are reimbursed in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 755, as an add-on amount. ~~(3-4-11)~~(10-1-12)T

**c.** Ventilator Dependent Residents and Residents Receiving Tracheostomy Care. ~~The facility need not exceed the direct care limit to receive a special rate for ventilator care and tracheostomy care.~~ In the case of **residents**

~~who are ventilator-dependent and who receive tracheostomy residents care, a two (2) step approach is taken to establish an add-on amount. The first step is the calculation of a staffing add-on for the cost, if any, of additional direct care staff required to meet the exceptional needs of these residents that is higher than the amount indicated on the resident's most recent Medicaid RUG score. The add-on is calculated following the provisions in Subsection 270.06.d. of this rule, adjusted for the appropriate skill level of care staff. The second step is the calculation of an add-on for equipment and non-therapy supplies following the provision in Subsection 270.06.b. of this rule. The combined amount of these two (2) components is considered the special add-on amount to the facility's rate for approved residents receiving this care. the special add-on amount to the facility's rate for approved residents receiving this care, is determined by combining the following two (2) components:~~ (3-4-11)(10-1-12)T

~~i. Calculation of a staffing add-on for the cost, if any, for additional direct care staff required in meeting the exceptional needs of these residents. The hourly add-on rate is equal to the current WAHR CNA wage rate plus a benefits allowance based on annual cost report data, then weighted to remove the CNA minimum daily staffing time adjusted for the appropriate skill level of care staff; and~~ (10-1-12)T

~~ii. Calculation of an add-on for equipment and non-therapy supplies following the provisions in Subsection 270.06.a. of this rule.~~ (10-1-12)T

~~d. Residents Not Residing in a Special Care Unit Requiring One to One Staffing Ratios. Facilities may at times have residents who require unusual levels of staffing, such as one to one staffing ratios to meet the exceptional needs of that resident. If the staffing level is higher than the amount indicated on the resident's most recent Medicaid RUG score, the facility may request a special rate. If the resident qualifies for a special rate for additional direct care staff required to meet the exceptional needs of that resident, an hourly add-on rate is computed for reimbursement of approved one to one (1 to 1) hours in excess of the minimum staffing requirements in effect for the period. The hourly add-on rate is equal to the current WAHR CNA wage rate plus a benefits allowance based on annual cost report data, then weighted to remove the CNA Minimum daily staffing time.~~ (3-4-11)

**07. Treatment of the Special Rate Cost for Future Rate Setting Periods.** Special rates are established on a prospective basis similar to the overall facility rate. When the cost report used to set a prospective rate contains ~~non-unit~~ special rate costs, an adjustment is made to "offset," or reduce costs by an amount equal to total incremental revenues, or add-on payments received by the provider during the cost reporting period. The amount received is calculated by multiplying the special rate add-on amount paid for each qualifying resident by the number of days that were paid. No related adjustment is made to the facility's CMIs. (3-19-07)(10-1-12)T

**08. Special Rate for Providers that Change Ownership or Close.** When a facility changes ownership or closes, a closing cost report is not required. Special rate payments made in the closing cost reporting period may be reviewed by the Department. (10-1-12)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**622. ICF/ID: PRINCIPLE PROSPECTIVE RATES.**

Providers of ICF/ID facilities will be paid a per diem rate which, with certain exceptions, is not subject to an audit settlement. The per diem rate for a fiscal period will be based on audited historical costs adjusted for inflation. The provider ~~will~~ **must** report these cost items in accordance with other provisions of this chapter or the applicable provisions of PRM consistent with this chapter. Sections 622 through 628 of these rules provide procedures and specifications necessary to implement the provisions and accomplish the objectives of the payment system for ICF/ID providers. Total payment will include the following components: Property reimbursement, capped costs, exempt costs, and excluded costs. Except as otherwise provided in this section, rates calculated for state fiscal year 2012 (July 1, 2011 through June 30, 2012) will be calculated by using finalized cost reports ended in calendar year 2009 with no cost or cost limit adjustments for inflation to the rate period of July 1, 2011, through June 30, 2012. **Rates effective July 1, 2012, and every July 1 thereafter, will be calculated by using audited cost reports ended in the calendar year two (2) years prior to each July 1 (July 1, 2012, rates will use cost reports ended in calendar year 2010 and so forth), with no cost or cost limit adjustments for inflation.** (3-21-12)(10-1-12)T

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.04.02 - IDAHO TELECOMMUNICATION SERVICE ASSISTANCE PROGRAM RULES

DOCKET NO. 16-0402-1201

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is June 1, 2012.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-901, Idaho Code, and 47 CFR 54.405.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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:

Under changes made by the Federal Communication Commission (FCC), the eligibility level for these services increased from 133% of the Federal Poverty Guidelines (FPG) to 135% of the FPG. These rules are being amended to align with federal regulations for the increase in the FPG, remove and update obsolete language, remove the "Link Up" benefit program that is no longer available in FCC regulations, and add required sections to this rule chapter.

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

The federal regulations governing this program, require that the eligibility level for the telecommunication assistance program be increased and effective on June 1, 2012.

**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: None.

**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(2), Idaho Code, negotiated rulemaking was not conducted because the rule is a temporary rule and was not feasible to negotiate. The Department is required to align these rules with the federal regulations in 47 CFR 54.405.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Genie Sue Weppner at (208) 334-5656.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720

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THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT  
OF DOCKET NO. 16-0402-1201

**000. LEGAL AUTHORITY.**

~~Chapter 9, Title 56, Section 56-901, Idaho Code.~~ grants legal authority to the Department of Health and Welfare to adopt rules to provide eligible recipients with a reduction in the costs of telecommunication ~~installation and~~ service. ~~The program is authorized by the Federal Communication Commission (FCC) under 47 CFR Sections 54.101 through 54.422.~~ (7-1-99)(6-1-12)T

**001. TITLE, ~~AND~~ SCOPE, ~~AND~~ PURPOSE.**

**01. Title.** These rules ~~shall be known as Idaho Department of Health and Welfare Rules,~~ are cited as IDAPA 16.04.02, "Idaho Telecommunication Service Assistance Program Rules." (6-1-12)T

**02. Scope.** These rules contain official requirements governing the program's right to provide eligible recipients with a reduction of costs in telecommunication installation and service. (7-1-99)(6-1-12)T

**03. Purpose.** The purpose of these rules is to establish requirements of the Idaho Telecommunication Service Assistance Program (ITSAP) as authorized by Sections 62-610, 56-901, 56-902, 56-903, and 56-904, Idaho Code. ITSAP shall maximize federal "lifeline" contributions to Idaho's low income customers. (6-1-12)T

**002. ~~(RESERVED)~~ WRITTEN INTERPRETATIONS.**

~~In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretations of the rules of this chapter.~~ (6-1-12)T

**003. ADMINISTRATIVE APPEALS.**

Contested case appeals ~~shall be~~ are governed by Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 300, et seq. (7-1-99)(6-1-12)T

**004. ~~PURPOSE INCORPORATION BY REFERENCE.~~**

~~The purpose of these rules is to establish requirements of the Idaho Telecommunication Assistance Service Program (ITSAP) as authorized by Sections 62-610, 56-901, 56-902, 56-903, and 56-904 of the Idaho Code. ITSAP shall maximize federal "lifeline" and "link up" contributions to Idaho's low income customers. No documents are incorporated by reference in this chapter of rule.~~ (7-1-99)(6-1-12)T

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

**01. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the State of Idaho. (6-1-12)T

**02. Mailing Address.** The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (6-1-12)T

**03. Street Address.** The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (6-1-12)T

**04. Telephone.** The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. (6-1-12)T

**05. Internet Website.** The Department's internet website is <http://www.healthandwelfare.idaho.gov/>. (6-1-12)T

**006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.**

**01. Confidential Records.** Disclosure of 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." (6-1-12)T

02. Public Records. The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. (6-1-12)T

007. -- 009. (RESERVED)

00510. DEFINITIONS.

01. Assistance Rate Discount. A monthly discount to eligible "lifeline" subscribers ~~of residential for~~ basic local ~~exchange~~ service ~~of three dollars and fifty cents (\$3.50) or an amount authorized by the Federal Communication Commission, whichever is greater. The discount will not exceed the rate charged for the grade of residential basic local exchange service subscribed to by each eligible individual. A service installation cost reduction of fifty percent (50%), up to a maximum of thirty dollars (\$30), will be granted to eligible "link-up" recipients under the Idaho Telecommunication Service Assistance Program (ITSAP) authorized in Sections 56-901 through 56-904, and 62-610, Idaho Code.~~ (7-1-99)(6-1-12)T

02. Community Action Agency. A private, non-profit organization serving the low-income population in specified counties of the state which meet the requirements to be designated as a community action agency according to the Community Services Block Grant Act, and has entered into a contract with the Idaho Department of Health and Welfare for the provision of ITSAP services. (6-1-12)T

023. Department. The Idaho Department of Health and Welfare. (3-5-91)

034. Eligibility Application. The current Participant Assessment Application form or the Application for Assistance (AFA) form. (7-1-99)

045. Eligible Basic Local Service. A single residence telecommunication service at the principal residence of the eligible subscriber/head of household. (7-1-99)

06. Federal Poverty Guidelines (FPG). The poverty guidelines issued annually by the Department of Health and Human Services (HHS). The federal poverty guidelines are available on the U.S. Health and Human Services at <http://aspe.hhs.gov/poverty>. (6-1-12)T

057. Head of Household. The adult member of a household responsible for payment of at least fifty percent (50%) of the cost of the ~~residential basic~~ local ~~exchange~~ service. (7-1-99)(6-1-12)T

068. Household. A household is either an individual living alone or a group of individuals ~~who are~~ living together ~~in common living quarters and facilities under such domestic arrangements and circumstances as to create a single establishment~~ at the same address as one economic unit. A household may include related and unrelated persons. An "economic unit" consists of all adult individuals contributing to and sharing in the income and expenses of a household. An adult is any person eighteen (18) years or older. If an adult has no or minimal income, and lives with someone who provides financial support to him, both people shall be considered part of the same household. Children under the age of eighteen (18) living with their parents or guardians are considered to be part of the same household as their parents or guardians. (3-5-91)(6-1-12)T

09. Income. Income is the gross amount of money actually received in the recipients household from all sources.

10. ITSAP. Idaho Telecommunication Service Assistance Program. (6-1-12)T

0711. Lifeline. ITSAP component that provides a monthly discount rate to eligible subscribers on their ~~residential~~ basic local ~~exchange~~ service costs. (7-1-99)(6-1-12)T

08. Link-Up. ~~ITSAP component that provides a discount rate to eligible subscribers on installation of~~

~~residential basic local exchange service costs.~~

~~(7-1-99)~~

~~0912.~~ **Provider.** The eligible telecommunication carrier providing ~~residential~~ basic local ~~exchange~~ service to Idaho residents. ~~(7-1-99)(6-1-12)T~~

~~103.~~ **Recipient.** A person ~~who is~~ determined eligible for ITSAP. ~~(7-1-99)(6-1-12)T~~

~~14.~~ **Subscriber.** ~~That~~ ~~A~~ person applying for basic local ~~exchange~~ service or, in whose name the ~~residential~~ basic local ~~exchange~~ service is listed. The subscriber does not need to be the head of the household. ~~(7-1-99)(6-1-12)T~~

~~00611.~~ -- 099. (RESERVED)

#### 100. ASSISTANCE ELIGIBILITY REQUIREMENTS.

~~01.~~ **Head of Household.** ~~A~~ ~~R~~ecipients must be the head of the household. ~~(7-1-99)(6-1-12)T~~

~~02.~~ **Application.** A person must complete an application with the Department or Community Action Agency on behalf of his household, listing all members. The application may be completed by a person other than the head of the household. ~~(7-1-99)~~

~~03.~~ **Income Limit.** The household's gross income must be at or below one hundred and thirty ~~three~~ ~~five~~ percent (13~~3~~~~5~~%) of the Federal Poverty ~~Limit~~ ~~Guideline~~ (FPG). Households receiving any type of state or federal assistance with income limits at or below one hundred and thirty ~~three~~ ~~five~~ percent (13~~3~~~~5~~%) of the ~~Federal Poverty Limit~~ ~~FPG~~ are income eligible for ITSAP. ~~(7-1-99)(6-1-12)T~~

~~101.~~ -- 109. (RESERVED)

#### ~~110.~~ ASSISTANCE DISCOUNT RATE.

~~An eligible "lifeline" recipient is given a monthly discount for basic local service in the amount of three dollars and fifty cents (\$3.50) or an amount authorized by the Federal Communication Commission, whichever is greater. The discount cannot exceed the rate charged for the grade of basic local service subscribed to by eligible recipient.~~

~~(6-1-12)T~~

~~1011.~~ -- 399. (RESERVED)

### (BREAK IN CONTINUITY OF SECTIONS)

~~601.~~ -- ~~996~~~~9.~~ (RESERVED)

#### ~~996.~~ ADMINISTRATIVE PROVISIONS.

~~Contested case appeals shall be governed by Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, Sections 300, et seq., "Rules Governing Contested Case Proceedings and Declaratory Rulings."~~ ~~(12-31-91)~~

#### ~~997.~~ CONFIDENTIALITY OF RECORDS.

~~Any disclosure of information obtained by the Department is subject to the restrictions contained in Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Disclosure of Department Records."~~ ~~(3-5-91)~~

~~998.~~ (RESERVED)

#### ~~999.~~ SEVERABILITY.

~~Idaho Department of Health and Welfare Rules, IDAPA 16.04.02, are severable. If any rule or regulation, or part thereof, or the application of such rule or regulation to any person or circumstance, is declared invalid, that invalidity does not affect the validity of any remaining portion of this chapter.~~ ~~(3-5-91)~~

# IDAPA 17 - INDUSTRIAL COMMISSION

## 17.02.09 - MEDICAL FEES

DOCKET NO. 17-0209-1201

### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 72-508, 72-720, 72-721, 72-722, 72-723, and 72-803, Idaho Code.

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

<b>Monday – October 22, 2012 2:00 p.m. to 4:00 p.m. (MDT)</b>
<b>Industrial Commission Office 700 South Clearwater Lane Boise, Idaho 83712</b>

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

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: Reduces the number of conversion factors and provides the annual adjustment of the medical fee schedule for physician reimbursement in accordance with Section 72-803, Idaho Code; creates a pharmaceutical fee schedule for pharmacies and dispensing physicians; standardizes the required coding sets used by providers for billing medical services.

**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(2), Idaho Code, negotiated rulemaking for the pharmaceutical fee schedule was not conducted due to time constraints and the need to implement cost containment for drugs as soon as possible. The changes to the physician fee schedule and the changes to standardize the billing requirements were developed in collaboration with industry representatives.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: No documents have been incorporated by reference into this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Patti Vaughn, Medical Fee Schedule Analyst 208-334-6084 or 1-800-950-2110.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th Day of August, 2012.

Mindy Montgomery, Director  
Industrial Commission  
700 S. Clearwater Lane

PO Box 83720  
Boise, ID 83720-0041

Phone: 208-334-6000  
Fax: 208-334-5145

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0209-1201**

**030. DEFINITIONS.**

Words and terms used in this rule are defined in the subsections which follow. (4-7-11)

**01. Charge.** Expense or cost. For hospitals and ASCs, “charge” shall mean the total charge. (4-7-11)

**a.** “Acceptable charge.” The charge for medical services calculated in accordance with this rule or as billed by the provider, whichever is lower, or the charge agreed to pursuant to a written contract. (4-7-11)

**b.** “Customary charge.” A charge which shall have an upper limit no higher than the 90th percentile, as determined by the Commission, of usual charges made by Idaho Providers for a given medical service. (4-7-11)

**c.** “Reasonable charge.” A charge that does not exceed the Provider’s “usual” charge and does not exceed the “customary” charge, as defined in this rule. (4-7-11)

**d.** “Usual charge.” The most frequent charge made by an individual Provider for a given medical service to non-industrially injured patients. (4-7-11)

**02. Ambulatory Payment Classification (APC).** A payment system adopted by the Center for Medicare and Medicaid Services (CMS) for outpatient services. (4-7-11)

**03. Ambulatory Surgery Center (ASC).** A facility providing medical services on an outpatient basis only. (4-7-11)

**04. Average Wholesale Price (AWP).** The average wholesale price for medicine obtained from pricing data provided by the original manufacturer of that medicine to industry-wide compilers of drug prices, e.g., Red Book and Medi-Span. ( )

**045. Critical Access Hospital.** A hospital currently designated as a critical access hospital by the Centers for Medicare and Medicaid Services (CMS). (4-7-11)

**056. Hospital.** An acute care facility providing medical services on an inpatient and outpatient basis. (4-7-11)

**067. Implantable Hardware.** Objects or devices that are made to support, replace or act as a missing anatomical structure or to support or manage proper biological functions or disease processes and where surgical or medical procedures are needed to insert or apply such devices and surgical or medical procedures are required to remove such devices. The term also includes equipment necessary for the proper operation of the implantable hardware, even if not implanted in the body. (4-7-11)

**078. Medical Service.** Medical, surgical, dental or other attendance or treatment, nurse and hospital service, medicine, apparatus, appliance, prostheses, and related service, facility, equipment and supply, as set forth in Section 72-102, Idaho Code. (4-7-11)

**089. Medicare Severity - Diagnosis Related Group (MS-DRG).** A system adopted by the Centers for Medicare and Medicaid Services (CMS) that groups hospital admissions based on diagnosis codes, surgical procedures and patient demographics. (4-7-11)

**0910. Payor.** The legal entity responsible for paying medical benefits under Idaho’s Workers’ Compensation Law. (4-7-11)

**11. Pharmacy.** A business licensed to compound or dispense prescription medicine. ( )

**102. Physician.** A member of any healing profession licensed or authorized to provide medical services



by the statutes of this state, as set forth in Section 72-102, Idaho Code. (4-7-11)

**123. Provider.** Any person, firm, corporation, partnership, association, agency, institution or other legal entity providing any kind of medical service related to the treatment of an industrially injured patient which is compensable under the Idaho’s Workers’ Compensation Law, as set forth in Section 72-102, Idaho Code. (4-7-11)

**124. Rehabilitation Hospital.** A facility operated for the primary purpose of assisting with the rehabilitation of disabled persons through an integrated program of medical, psychological, social, and vocational evaluation and services under competent professional supervision. (4-7-11)

**031. ACCEPTABLE CHARGES FOR MEDICAL SERVICES PROVIDED BY PHYSICIANS UNDER THE IDAHO WORKERS' COMPENSATION LAW.**

Pursuant to Section 72-508 and Section 72-803, Idaho Code, the Industrial Commission (hereinafter “the Commission”) hereby adopts the following rule for determining acceptable charges for medical services provided by physicians under the Idaho Workers’ Compensation Law. (4-7-11)

**01. Acceptable Charge.** Payors shall pay providers the acceptable charge for medical services provided by physicians. (4-7-11)

**02. Adoption of Standard for Physicians.** The Commission hereby adopts the Resource-Based Relative Value Scale (RBRVS), published by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services, as amended, as the standard to be used for determining the acceptable charge for medical services provided under the Idaho Workers' Compensation Law by physicians. (4-7-11)

**03. Conversion Factors.** The following conversion factors shall be applied to the fully-implemented facility or non-facility Relative Value Unit (RVU) as determined by place of service found in the latest RBRVS, as amended, that was published before December 31 of the previous calendar year for a medical service identified by a code assigned to that service in the latest edition of the Physicians' Current Procedural Terminology (CPT), published by the American Medical Association, as amended:

<b>MEDICAL FEE SCHEDULE</b>			
<b>SERVICE CATEGORY</b>	<b>CODE RANGE(S)</b>	<b>DESCRIPTION</b>	<b>CONVERSION FACTOR</b>
<i>Anesthesia</i>	<i>00000-09999</i>	<i>Anesthesia</i>	<i>\$60.33</i>
<i>Surgery- Group One</i>	<i>22000-22999 23000-24999 25000-27299 27300-27999 29800-29999 61000-61999 62000-62259 63000-63999</i>	<i>Spine Shoulder, Upper Arm, &amp; Elbow Forearm, Wrist, Hand, Pelvis &amp; Hip Leg, Knee, &amp; Ankle Endoscopy &amp; Arthroscopy Skull, Meninges &amp; Brain Repair, Neuroendoscopy &amp; Shunts Spine &amp; Spinal Cord</i>	<i>\$140.00</i>
<i>Surgery- Group Two</i>	<i>28000-28999 64550-64999</i>	<i>Foot &amp; Toes Nerves &amp; Nervous System</i>	<i>\$129.00</i>
<i>Surgery- Group Three</i>	<i>13000-19999 20650-21999</i>	<i>Integumentary System Musculoskeletal System</i>	<i>\$113.52</i>

<b>MEDICAL FEE SCHEDULE</b>			
<b>SERVICE CATEGORY</b>	<b>CODE RANGE(S)</b>	<b>DESCRIPTION</b>	<b>CONVERSION FACTOR</b>
<i>Surgery - Group Four</i>	<i>10000 - 12999 20000 - 20615 29000 - 29799 30000 - 39999 40000 - 49999 50000 - 59999 60000 - 60999 62260 - 62999 64000 - 64549 65000 - 69999</i>	<i>Integumentary System Musculoskeletal System Casts &amp; Strapping Respiratory &amp; Cardiovascular Digestive System Urinary System Endocrine System Spine &amp; Spinal Cord Nerves &amp; Nervous System Eye &amp; Ear</i>	<i>\$87.72</i>
<i>Radiology</i>	<i>70000 - 79999</i>	<i>Radiology</i>	<i>\$88.54</i>
<i>Pathology &amp; Laboratory</i>	<i>80000 - 89999</i>	<i>Pathology &amp; Laboratory</i>	<i>To Be Determined</i>
<i>Medicine - Group One</i>	<i>90000 - 90799 94000 - 94999 97000 - 97799 97800 - 98999</i>	<i>Immunization, Injections, &amp; Infusions Pulmonary / Pulse Oximetry Physical Medicine &amp; Rehabilitation Acupuncture, Osteopathy, &amp; Chiropractic</i>	<i>\$47.00</i>
<i>Medicine - Group Two</i>	<i>90800 - 92999 93000 - 93999 95000 - 96020 96040 - 96999 99000 - 99607</i>	<i>Psychiatry &amp; Medicine Cardiography, Catheterization, &amp; Vascular Studies Allergy / Neuromuscular Procedures Assessments &amp; Special Procedures E/M &amp; Miscellaneous Services</i>	<i>\$68.50</i>

<b>MEDICAL FEE SCHEDULE</b>			
<b>SERVICE CATEGORY</b>	<b>CODE RANGE(S)</b>	<b>DESCRIPTION</b>	<b>CONVERSION FACTOR</b>
<u>Anesthesia</u>	<u>00000 - 09999</u>	<u>Anesthesia</u>	<u>\$60.33</u>
<u>Surgery - Group One</u>	<u>22000 - 22999 23000 - 24999 25000 - 27299 27300 - 27999 29800 - 29999 61000 - 61999 62000 - 62259 63000 - 63999</u>	<u>Spine Shoulder, Upper Arm, &amp; Elbow Forearm, Wrist, Hand, Pelvis &amp; Hip Leg, Knee, &amp; Ankle Endoscopy &amp; Arthroscopy Skull, Meninges &amp; Brain Repair, Neuroendoscopy &amp; Shunts Spine &amp; Spinal Cord</u>	<u>\$135.00</u>

<b>MEDICAL FEE SCHEDULE</b>			
<b><u>SERVICE CATEGORY</u></b>	<b><u>CODE RANGE(S)</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>CONVERSION FACTOR</u></b>
<u>Surgery - Group Two</u>	<u>10000 - 19999</u> <u>20000 - 21999</u> <u>28000 - 28999</u> <u>29000 - 29799</u> <u>30000 - 39999</u> <u>40000 - 49999</u> <u>50000 - 59999</u> <u>60000 - 60999</u> <u>62260 - 62999</u> <u>64000 - 64999</u> <u>65000 - 69999</u>	<u>Integumentary System</u> <u>Musculoskeletal System</u> <u>Foot &amp; Toes</u> <u>Casts &amp; Strapping</u> <u>Respiratory &amp; Cardiovascular</u> <u>Digestive System</u> <u>Urinary System</u> <u>Endocrine System</u> <u>Spine &amp; Spinal Cord</u> <u>Nerves &amp; Nervous System</u> <u>Eye &amp; Ear</u>	<u>\$88.54</u>
<u>Radiology</u>	<u>70000 - 79999</u>	<u>Radiology</u>	<u>\$88.54</u>
<u>Pathology &amp; Laboratory</u>	<u>80000 - 89999</u>	<u>Pathology &amp; Laboratory</u>	<u>To Be Determined</u>
<u>Medicine - Group One</u>	<u>90000 - 90799</u> <u>94000 - 94999</u> <u>97000 - 97799</u> <u>97800 - 98999</u>	<u>Immunization, Injections, &amp; Infusions</u> <u>Pulmonary / Pulse Oximetry</u> <u>Physical Medicine &amp; Rehabilitation</u> <u>Acupuncture, Osteopathy, &amp; Chiropractic</u>	<u>\$49.65</u>
<u>Medicine - Group Two</u>	<u>90800 - 92999</u> <u>93000 - 93999</u> <u>95000 - 96020</u> <u>96040 - 96999</u> <u>99000 - 99607</u>	<u>Psychiatry &amp; Medicine</u> <u>Cardiography, Catheterization, Vascular Studies</u> <u>Allergy / Neuromuscular Procedures</u> <u>Assessments &amp; Special Procedures</u> <u>E / M &amp; Miscellaneous Services</u>	<u>\$70.00</u>

(7-1-12)( )

**04. Anesthesiology.** The Conversion Factor for the Anesthesiology CPT Codes shall be multiplied by the Anesthesia Base Units assigned to that CPT Code by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services as of December 31 of the previous calendar year, plus the allowable time units reported for the procedure. Time units are computed by dividing reported time by fifteen (15) minutes. Time units will not be used for CPT Code 01996. (4-7-11)

**05. Adjustment of Conversion Factors.** The conversion factors set out in this rule shall be adjusted each fiscal year (FY) by the Commission to reflect changes in inflation or market conditions in accordance with Section 72-803, Idaho Code. (4-7-11)

**06. Services Without CPT Code, RVU or Conversion Factor.** The acceptable charge for medical services that do not have a current CPT code, a currently assigned RVU, or a conversion factor will be the reasonable charge for that service, based upon the usual and customary charge and other relevant evidence, as determined by the Commission. Where a service with a CPT Code, RVU, and conversion factor is, nonetheless, claimed to be exceptional or unusual, the Commission may, notwithstanding the conversion factor for that service set out in Subsection 031.03, above, determine the acceptable charge for that service, based on all relevant evidence in accordance with the procedures set out in Section 034, below. (4-7-11)

**07. Coding.** The Commission will generally follow the coding guidelines published by the Centers for Medicare and Medicaid Services and by the American Medical Association, including the use of modifiers. The

procedure with the largest RVU will be the primary procedure and will be listed first on the claim form. Modifiers will be reimbursed as follows: (4-7-11)

- a. Modifier 50: Additional fifty percent (50%) for bilateral procedure. (4-7-11)
- b. Modifier 51: Fifty percent (50%) of secondary procedure. This modifier will be applied to each medical or surgical procedure rendered during the same session as the primary procedure. (4-7-11)
- c. Modifier 80: Twenty-five percent (25%) of coded procedure. (4-7-11)
- d. Modifier 81: Fifteen percent (15%) of coded procedure. This modifier applies to MD and non-MD assistants. (4-7-11)

08. **Medicine Dispensed By Physicians.** Reimbursement to physicians for any medicine shall not exceed the acceptable charge calculated for that medicine as if provided by a pharmacy under Section 033, of this rule, less any dispensing or compounding fee. Reimbursement to physicians for repackaged medicine shall be the Average Wholesale Price (AWP) for the medicine prior to repackaging, identified by the National Drug Code (NDC) reported by the original manufacturer. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**033. ACCEPTABLE CHARGES FOR MEDICINE PROVIDED BY PHARMACIES.**

Pursuant to Section 72-508 and Section 72-803, Idaho Code, the Commission hereby adopts the following rule for determining acceptable charges for medicine provided by a pharmacy under the Idaho Workers' Compensation Law. ( )

01. **Acceptable Charge.** Payors shall pay providers the acceptable charge for medicine provided by a pharmacy. ( )

02. **Adoption of Standards for Pharmacies.** The following standards shall be used to determine the acceptable charge for medicine provided by pharmacies. ( )

a. **Brand/Trade Name Medicine.** The standard for determining the acceptable charge for brand/trade name medicine shall be the Average Wholesale Price (AWP), plus a two dollar (\$2) dispensing fee. ( )

b. **Generic Medicine.** The standard for determining the acceptable charge for generic medicine shall be the Average Wholesale Price (AWP), plus a five dollar (\$5) dispensing fee. ( )

c. **Compound Medicine.** The standard for determining the acceptable charge for compound medicine shall be the sum of the Average Wholesale Price (AWP) for each drug included in the compound medicine, plus a five dollar (\$5) dispensing fee and a two dollar (\$2) compounding fee. ( )

d. **Over-The Counter (OTC) Medicine.** The standard for determining the acceptable charge for over-the-counter (OTC) medicine shall be the reasonable charge, but no dispensing fee. ( )

03. **Disputes.** The Commission shall determine the acceptable charge for medicine provided by a pharmacy that is disputed based on all relevant evidence in accordance with the procedures set out in Section 035 of this rule. ( )

**034. ACCEPTABLE CHARGES FOR MEDICAL SERVICES PROVIDED BY OTHER PROVIDERS UNDER THE IDAHO WORKERS' COMPENSATION LAW.**

Pursuant to Section 72-508 and Section 72-803, Idaho Code, the Commission hereby adopts the following rule for determining acceptable charges for medical services provided by providers other than physicians, hospitals or ASCs under the Idaho Workers' Compensation Law. (4-7-11)

**01. Acceptable Charge.** Payors shall pay providers the acceptable charge for medical services provided by providers other than physicians, hospitals or ASCs. (4-7-11)

**02. Adoption of Standard.** The standard for determining the acceptable charge for providers other than physicians, hospitals or ambulatory surgery centers (ASCs) shall be the reasonable charge. (4-7-11)

**03. Disputes.** The Commission shall determine the acceptable charge for medical services provided by providers other than physicians, hospitals and ASCs that are disputed based on all relevant evidence in accordance with the procedures set out in Section 0345 of this rule. ~~(4-7-11)~~( )

**0345. BILLING AND PAYMENT REQUIREMENTS FOR MEDICAL SERVICES AND PROCEDURES PRELIMINARY TO DISPUTE RESOLUTION.**

**01. Authority.** Pursuant to Section 72-508 and Section 72-803, Idaho Code, the Industrial Commission hereby promulgates this rule governing billing and payment requirements for medical services provided under the Workers' Compensation Law and the procedures for resolving disputes between payors and providers over those bills or payments. (4-7-11)

**02. Time Periods.** None of the periods herein shall begin to run before the Notice of Injury/Claim for Benefits has been filed with the Employer as required by law. (4-7-11)

**03. Provider to Furnish Information.** A Provider, when submitting a bill to a Payor, shall inform the Payor of the nature and extent of medical services furnished and for which the bill is submitted. This information shall include, but is not limited to, the patient's name, the employer's name, the date the medical service was provided, the diagnosis, if any, and the amount of the charge or charges. Failure to submit a bill complying with this Subsection 0345.03 to the Payor within one hundred twenty (120) days of the date of service will result in the ineligibility of the Provider to utilize the dispute resolution procedures of the Commission set out in Subsection 0345.10 for that service. ~~(4-7-11)~~( )

**a.** A Provider's bill shall, whenever possible, describe the Medical Service provided, using the American Medical Association's appropriate Current Procedural Terminology (CPT) coding, including modifiers, the appropriate Healthcare Common Procedure Coding System (HCPCS) code, the diagnostic and procedure code set version required by the Centers for Medicare and Medicaid Services (CMS) and the original National Drug Code (NDC for the year in which the service was performed ~~and using current International Classification of Diseases (ICD) diagnostic coding, as well.~~ ~~(4-7-11)~~( )

**b.** The bill shall also contain the name, address and telephone number of the individual the Payor may contact in the event the Payor seeks additional information regarding the Provider's bill. (4-7-11)

**c.** If requested by the Payor, the bill shall be accompanied by a written report as defined by IDAPA 17.02.04, "Administrative Rules of the Industrial Commission Under the Workers' Compensation Law -- Benefits." Subsection 322.01.f. Where a bill is not accompanied by such Report, the periods expressed in Subsections 0345.04 and 0345.06, below, shall not begin to run until the Payor receives the Report. ~~(4-7-11)~~( )

**04. Prompt Payment.** Unless the Payor denies liability for the claim or, pursuant to Subsection 0345.06, below, sends a Preliminary Objection, a Request for Clarification, or both, as to any charge, the Payor shall pay the charge within thirty (30) calendar days of receipt of the bill. ~~(4-7-11)~~( )

**05. Partial Payment.** If the Payor acknowledges liability for the claim and, pursuant to Subsection 0345.06, below, sends a Preliminary Objection, a Request for Clarification, or both, as to only part of a Provider's bill, the Payor must pay the charge or charges, or portion thereof, as to which no Preliminary Objection or Request for Clarification has been made, within thirty (30) calendar days of receipt of the bill. ~~(4-7-11)~~( )

**06. Preliminary Objections and Requests for Clarification.** (4-7-11)

**a.** Whenever a Payor objects to all or any part of a Provider's bill on the ground that such bill contains

a charge or charges that do not comport with the applicable administrative rule, the Payor shall send a written Preliminary Objection to the Provider within thirty (30) calendar days of the Payor's receipt of the bill explaining the basis for each of the Payor's objections. (4-7-11)

**b.** Where the Payor requires additional information, the Payor shall send a written Request for Clarification to the Provider within thirty (30) calendar days of the Payor's receipt of the bill, and shall specifically describe the information sought. (4-7-11)

**c.** Each Preliminary Objection and Request for Clarification shall contain the name, address and phone number of the individual located within the state of Idaho that the Provider may contact regarding the Preliminary Objection or Request for Clarification. (4-7-11)

**d.** Where a Payor does not send a Preliminary Objection to a charge set forth in a bill or a Request for Clarification within thirty (30) calendar days of receipt of the bill, or provide an in-state contact in accord with Subsection 0345.06.c., it shall be precluded from objecting to such charge as failing to comport with the applicable administrative rule. ~~(4-7-11)~~( )

**07. Provider Reply to Preliminary Objection or Request for Clarification.** (4-7-11)

**a.** Where a Payor has timely sent a Preliminary Objection, Request for Clarification, or both, the Provider shall send to the Payor a written Reply, if any it has, within thirty (30) calendar days of the Provider's receipt of each Preliminary Objection or Request for Clarification. (4-7-11)

**b.** If a Provider fails to timely reply to a Preliminary Objection, the Provider shall be deemed to have acquiesced in the Payor's objection. (4-7-11)

**c.** If a Provider fails to timely reply to a Request for Clarification, the period in which the Payor shall pay or issue a Final Objection shall not begin to run until such clarification is received. (4-7-11)

**08. Payor Shall Pay or Issue Final Objection.** The Payor shall pay the Provider's bill in whole or in part or shall send to the Provider a written Final Objection, if any it has, to all or part of the bill within thirty (30) calendar days of the Payor's receipt of the Reply. (4-7-11)

**09. Failure of Payor to Finally Object.** Where the Payor does not timely send a Final Objection to any charge or portion thereof to which it continues to have an objection, it shall be precluded from further objecting to such charge as unacceptable. (4-7-11)

**10. Dispute Resolution Process.** If, after completing the applicable steps set forth above, a Payor and Provider are unable to agree on the appropriate charge for any Medical Service, a Provider which has complied with the applicable requirements of this rule may move the Commission to resolve the dispute as provided in the Judicial Rule Re: Disputes Between Providers and Payors, as referenced in Sections 031, 032, ~~and~~ 033, and 034 of this rule. If Provider's motion disputing CPT or MS-DRG coded items prevails, Payor shall pay the amount found by the Commission to be owed, plus an additional thirty percent (30%) of that amount to compensate Provider for costs and expenses associated with using the dispute resolution process. For motions filed by a Provider disputing items without CPT or MS-DRG codes, the additional thirty percent (30%) shall be due only if the Payor does not pay the amount found due within thirty (30) days of the administrative order. ~~(4-7-11)~~( )

**0356. -- 999. (RESERVED)**

**IDAPA 20 - DEPARTMENT OF LANDS**

**20.02.01 - RULES PERTAINING TO THE IDAHO FOREST PRACTICES ACT**

**DOCKET NO. 20-0201-1201**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 58-104(6), 58-105 and 38-1304, Idaho Code.

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

<b>Thursday, October 11, 2012, 1:00 p.m. (MDT)</b>	<b>Monday, October 15, 2012, 1:00 p.m. (PDT)</b>
<p><b>Idaho Department of Lands Garnet Conference Room 300 N. 6th Street, Suite 103 Boise, Idaho</b></p>	<p><b>Idaho Department of Lands Sundance Conference Room 3284 West Industrial Loop Coeur d'Alene, Idaho</b></p>

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

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

The Idaho Forest Practices Act Advisory Committee (FPAAC) is comprised of nine voting members across the state of Idaho representing family forest owners, industrial forest owners, fisheries biologists, citizens at large, and logging operators. This committee is statutorily charged with advising the Idaho State Board of Land Commissioners, in cooperation with the Idaho Department of Lands (IDL), in rulemaking matters associated with the Idaho Forest Practices Act. As a result of quadrennial water-quality audits conducted by the Idaho Department of Environmental Quality (IDEQ) in 2000 and 2004, FPAAC has been working over the last 10 years to develop a science-based shade/streamside retention rule that is based on Idaho forest riparian data. The proposed shade rule will allow forest landowners to select from two options which are meant to address both shade and large wood recruitment in streams. In addition to the shade rule, the FPAAC committee has identified and approved other minor FPA rule changes since 2006. Altogether, the proposed changes include:

- Recognition of all formal land-management agreements with US Fish & Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS)
- Increased flexibility of landowners and operators to perform timber-salvage operations following wildfire, insect infestations and wind events
- Protection of soils and riparian areas from any ground-based equipment usage in steep, unstable or stream-adjacent areas
- Assignment of reforestation responsibility to the landowner at the time of harvest
- Clearer definitions of wet areas and the associated equipment-exclusion areas
- Lower stocking minimums for drier, southern forest types
- New science-based streamside-tree-retention minima for Class I streams (shade rule) that allow forest landowners to select between two options

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: not applicable.

**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: not applicable.

**NEGOTIATED RULEMAKING:** Pursuant to Sections 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 8, 2012 Idaho Administrative Bulletin, [Volume 12-6, pages 25 and 26](#); and the July 4, 2012, Idaho Administrative Bulletin, [Volume 12-7, pages 104 and 105](#). Members of the public participated in the negotiated rulemaking process by attending the advertised meetings and by submitting written comments. The negotiated rulemaking record, which includes the negotiated rule draft, written public comments received, and the negotiated rulemaking summary, is available at [http://www.idl.idaho.gov/adminrule/forest\\_practices\\_rulemaking.html](http://www.idl.idaho.gov/adminrule/forest_practices_rulemaking.html).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: not applicable.

**INCORPORATION BY REFERENCE:** For assistance on technical questions concerning the proposed rule, contact Ara Andrea at (208) 769-1525 or [aandrea@idl.idaho.gov](mailto:aandrea@idl.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24<sup>th</sup>, 2012.

DATED this 31st day of August, 2012.

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 20-0201-1201**

**010. DEFINITIONS.**

Unless otherwise required by context as used in these rules: (10-14-75)

**01. Act.** The Idaho Forest Practices Act, Title 38, Chapter 13, Idaho Code. (7-1-96)

**02. Acceptable Tree Species.** Any of the tree species normally marketable in the region, which are suitable to meet stocking requirements. Acceptable trees must be of sufficient health and vigor to assure growth and harvest. (7-1-96)

**03. Additional Hazard.** The debris, slashings, and forest fuel resulting from a forest practice. (10-14-75)

**04. Average DBH.** Average diameter in inches of trees cut or to be cut, measured at four and one-half (4.5) feet above mean ground level on standing trees. All trees to be cut that do not have a measurable DBH will fall in the one inch (1") class. (7-1-96)

**05. Best Management Practice (BMP).** A practice or combination of practices determined by the board, in consultation with the department and the forest practices advisory committee, to be the most effective and practicable means of preventing or reducing the amount of nonpoint pollution generated by forest practices. BMPs



- shall include, but not be limited to, those management practices included in these rules. (9-11-90)
- 06. Board.** The Idaho State Board of Land Commissioners or its designee. (10-14-75)
- 07. Buffer Strip.** A protective area adjacent to an area requiring special attention or protection. (10-14-75)
- 08. Chemicals.** Substances applied to forest lands or timber to accomplish specific purposes and includes pesticides, as defined in the Idaho Pesticide Law, Title 22, Chapter 34, Idaho Code, fertilizers, soil amendments, road dust abatement products and other materials that may present hazards to the environment. (7-1-98)
- ~~**09. Clear Cut.** A harvest method where trees are removed and the residual stocking is below the minimum stocking levels of Subsection 050.04. (4-11-06)~~
- 109. Constructed Skid Trail.** A skid trail created by the deliberate cut and fill action of a dozer or skidder blade resulting in a road-type configuration. (7-1-96)
- 110. Commercial Products.** Saleable forest products of sufficient value to cover cost of harvest and transportation to available markets. (4-11-06)
- 121. Condition of Adjoining Area.** Those fuel conditions in adjoining areas that relate to spread of fire and to economic values of the adjoining area. (1-24-78)
- 132. Contaminate.** To introduce into the atmosphere, soil, or water sufficient quantities of substances that are injurious to public health, safety, or welfare or to domestic, commercial, industrial, agricultural or recreational uses or to livestock, wildlife, fish or other aquatic life. (4-11-06)
- 143. Cross-Ditch.** A diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation, duff, ditch, or other dispersion area so that it does not gain the volume and velocity which causes soil movement and erosion. (3-13-90)
- 154. Cull.** Nonmerchantable, alive, standing trees of greater height than twenty (20) feet. (1-24-78)
- 165. Department.** The Idaho Department of Lands. (10-14-75)
- 176. Deterioration Rate.** Rate of natural decomposition and compaction of fuel debris which decreases the hazard and varies by site. (1-24-78)
- 187. Director.** The Director of the Idaho Department of Lands or his designee. (10-14-75)
- 198. Emergency Forest Practice.** A forest practice initiated during or immediately after a fire, flood, windthrow, earthquake, or other catastrophic event to minimize damage to forest lands, timber, or public resources. (10-14-75)
- 2019. Fertilizers.** Any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment. (10-14-75)
- 210. Fire Trail.** Access routes that are located and constructed in a manner to be either useful in fire control efforts or deterring the fire spread in the hazard area. (10-14-75)
- 221. Forest Land.** Federal, state and private land growing forest tree species which are, or could be at maturity, capable of furnishing raw material used in the manufacture of lumber or other forest products. The term includes federal, state and private land from which forest tree species have been removed but have not yet been restocked. It does not include land affirmatively converted to uses other than the growing of forest tree species. (7-1-96)
- 232. Forest Practice.** (10-14-75)

a. The harvesting of forest tree species including felling, bucking, yarding, decking, loading and hauling; road construction, improvement or maintenance including installation or improvement of bridges, culverts or structures which convey stream flows within the operating area; also including the clearing of forest land for conversion to non-forest use when harvest occurs; (7-1-98)

b. Road construction, reconstruction or maintenance of existing roads including installation or improvement of bridges, culverts or structures which convey streams not within the operating area associated with harvesting of forest tree species; (7-1-98)

c. Reforestation; (10-14-75)

d. Use of chemicals for the purpose of managing forest tree species or forest land; (7-1-98)

e. The management of slash resulting from harvest, management or improvement of forest tree species or the use of prescribed fire on forest land. (7-1-98)

f. "Forest Practice" shall not include preparatory work such as tree marking, surveying, and road flagging or removal or harvesting of incidental vegetation from forest lands; such as berries, ferns, greenery, mistletoe, herbs, mushrooms, or other products which cannot normally be expected to result in damage to forest soils, timber, or public resources. (10-14-75)

**243.** **Forest Regions.** Two (2) regions of forest land: one (1) being north of the Salmon River and one (1) being south of the Salmon River. (7-1-96)

**24.** **Forest Type.** Five (5) forest types in Idaho are identified as follows: ( )

**a.** North Idaho grand fir/western redcedar (NIGF): moist to wet forests with western redcedar, western hemlock, and grand fir being primary climax species, found in forests north of the Clearwater/Lochsa River. ( )

**b.** Central Idaho grand fir/western redcedar (CIGF): productive conifer forests found in forests between the Clearwater/Lochsa River and the Salmon River, characterized by stands having western redcedar and grand fir as climax species, with a mixed-conifer overstory increasingly comprised of ponderosa pine, Douglas-fir, and larch in the river-breaks canyonlands. ( )

**c.** South Idaho grand fir (SIGF): mixed-conifer forests, dominated by ponderosa pine and Douglas-fir, found south of the Salmon River with grand fir and occasionally western redcedar being the stand climax species. ( )

**d.** Western hemlock-subalpine fir (WH): moist, cool forests dominated by western hemlock, mountain hemlock, and/or subalpine fir, generally found in higher elevation sites. ( )

**e.** Douglas-fir-ponderosa pine (PP): drier forests dominated by ponderosa pine and Douglas-fir, generally found in lower-elevation, dry sites. ( )

**25.** **Fuel Quantity.** The diameter, the number of stems and the predominate species to be cut or already cut, and the size of the continuous thinning block all of which determine quantity of fuel per unit of area. (1-24-78)

**26.** **Ground Based Equipment.** Mobile equipment such as tractors, dozers, skidders, and excavators, loaders, mechanized harvesters and forwarders used for harvesting, site preparation or hazard reduction. This does not include cable systems associated with stationary yarding equipment. (7-1-96)( )

**27.** **Habitat Types.** Forest land capable of producing similar plant communities at climax. (7-1-96)

**28.** **Harvesting.** A commercial activity related to the cutting or removal of forest tree species to be used as a forest product. A commercial activity does not include the cutting or removal of forest tree species by a

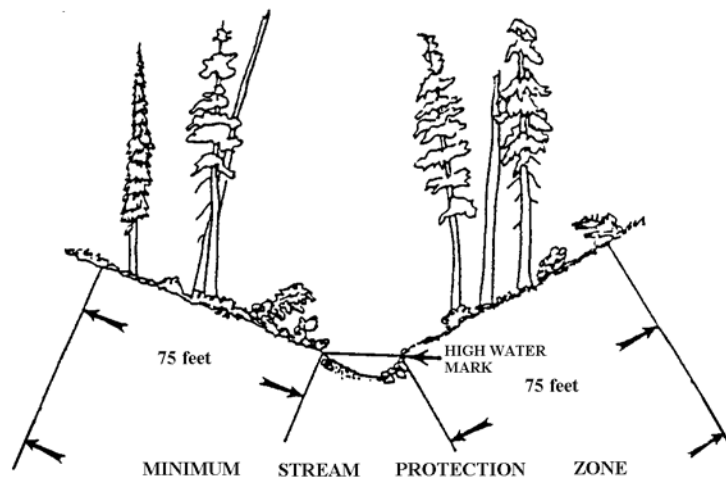
- person for his own personal use. (10-14-75)
- 29. Hazard.** Any vegetative residue resulting from a forest practice which constitutes fuel. (1-24-78)
- 30. Hazard Offset.** Improvements or a combination of practices which reduces the spread of fire and increases the ability to control fires. (10-14-75)
- 31. Hazard Points.** The number of points assigned to certain hazardous conditions on an operating area, to actions designed to modify conditions on the same area or to actions by the operator, timber owner or landowner to offset the hazardous conditions on the same area. (1-24-78)
- 32. Hazard Reduction.** The burning or physical reduction of slash by treatment in some manner which will reduce the risk from fire after treatment. (10-14-75)
- 33. Lake.** A body of perennial standing open water, natural or human-made, larger than one (1) acre in size. Lakes include the beds, banks or wetlands below the ordinary high water mark. Lakes do not include drainage or irrigation ditches, farm or stock ponds, settling or gravel ponds. Any reference in these rules to Class I streams shall also apply to lakes. (7-1-96)
- 34. Landowner.** A person, partnership, corporation, or association of whatever nature that holds an ownership interest in forest lands, including the state. (10-14-75)
- 35. Large Organic Debris (LOD).** Live or dead trees and parts or pieces of trees that are large enough or long enough or sufficiently buried in the stream bank or bed to be stable during high flows. Pieces longer than the channel width or longer than twenty (20) feet are considered stable. LOD creates diverse fish habitat and stable stream channels by reducing water velocity, trapping stream gravel and allowing scour pools and side channels to form. (3-13-90)
- 36. Merchantable Material.** That portion of forest tree species suitable for the manufacture of commercial products which can be merchandised under normal market conditions. (10-14-75)
- 37. Merchantable Stand of Timber.** A stand of trees that will yield logs or fiber: (7-1-96)
- a.** Suitable in size and quality for the production of lumber, plywood, pulp, or other forest products; (10-14-75)
- b.** Of sufficient value at least to cover all costs of harvest and transportation to available markets. (10-14-75)
- 38. Noncommercial Forest Land.** Habitat types not capable of producing twenty (20) cubic feet per acre per year. (7-1-96)
- 39. Operator.** A person who conducts or is required to conduct a forest practice. (10-14-75)
- 40. Operating Area.** That area where a forest practice is taking place or will take place. (1-24-78)
- 41. Ordinary High Water Mark.** That mark on all water courses, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation, as that condition exists on the effective date of this chapter, or as it may naturally change thereafter. (10-14-75)
- 42. Outstanding Resource Water.** A high quality water, such as water of national and state parks and wildlife refuges and water of exceptional recreational or ecological significance, which has been so designated by the legislature. ORW constitutes as outstanding national or state resource that requires protection from nonpoint activities, including forest practices, that may lower water quality. (7-1-96)

- 43. Partial Cutting.** The well distributed removal of a portion of the merchantable volume in a stand of timber. This includes seed tree, shelterwood, or individual tree selection harvesting techniques. (10-14-75)
- 44. Prescribed Fire.** The controlled application of fire to wildland fuels in either their natural or modified state, under such conditions of weather, fuel moisture and soil moisture, to allow the fire to be confined to a predetermined area and at the same time to produce the intensity of heat and rate of spread required to meet planned objectives. (7-1-96)
- 45. Present Condition of Area.** The amount or degree of hazard present before a thinning operation commences. (1-24-78)
- 46. Public Resource.** Water, fish, and wildlife, and in addition means capital improvements of the State or its political subdivisions. (10-14-75)
- 47. Reforestation.** The establishment of an adequately stocked stand of trees of species acceptable to the department to replace the ones removed by a harvesting or a catastrophic event on commercial forest land. (10-14-75)
- 48. Relief Culvert.** A structure to relieve surface runoff from roadside ditches to prevent excessive buildup in volume and velocity. (10-14-75)
- 49. Rules.** Rules adopted by the Board pursuant to Section 38-1304, Idaho Code. (7-1-96)
- 50. Slash.** Any vegetative residue three inches (3") and under in diameter resulting from a forest practice or the clearing of land. (7-1-96)
- 51. Site.** An area considered as to its ecological factors with reference to capacity to produce forest vegetation; the combination of biotic, climatic, and soil conditions of an area. (10-14-75)
- 52. Site Factor.** A combination of percent of average ground slope and predominate aspect of the forest practice area which relate to rate of fire spread. (1-24-78)
- 53. Site Specific Best Management Practice.** A BMP that is adapted to and takes account of the specific factors influencing water quality, water quality objectives, on-site conditions, and other factors applicable to the site where a forest practice occurs, and which has been approved by the Department, or by the Board in consultation with the Department and the Forest Practices Advisory Committee. (7-1-96)
- 54. Size of Thinning Block.** Acres of continuous fuel creating an additional hazard within a forest practice area. Distance between the perimeter of thinning blocks containing continuous fuel must be a minimum of six (6) chains apart to qualify as more than one (1) block. (1-24-78)
- 55. Snags.** Dead, standing trees twenty (20) feet and greater in height. (1-24-78)
- 56. Soil Erosion.** Movement of soils resulting from forest practices. (10-14-75)
- 57. Soil Stabilization.** The minimizing of soil movement. (10-14-75)
- 58. State.** The state of Idaho or other political subdivision thereof. (10-14-75)
- 59. Stream.** A natural water course of perceptible extent with definite beds and banks which confines and conducts continuously or intermittently flowing water. Definite beds are defined as having a sandy or rocky bottom which results from the scouring action of water flow. Any reference in these rules to Class I streams shall also apply to lakes. (7-1-96)
- a.** Class I streams are used for domestic water supply or are important for the spawning, rearing or migration of fish. Such waters shall be considered to be Class I upstream from the point of domestic diversion for a minimum of one thousand three hundred and twenty (1,320) feet. (11-7-86)

b. Class II streams are usually headwater streams or minor drainages that are used by only a few, if any, fish for spawning or rearing. Where fish use is unknown, consider streams as Class II where the total upstream watershed is less than two hundred and forty (240) acres in the north forest region and four hundred and sixty (460) acres in the south forest region. Their principle value lies in their influence on water quality or quantity downstream in Class I streams. (7-1-96)

c. Class I Stream Protection Zone means the area encompassed by a slope distance of seventy-five (75) feet on each side of the ordinary high water marks. (Figure 1.)

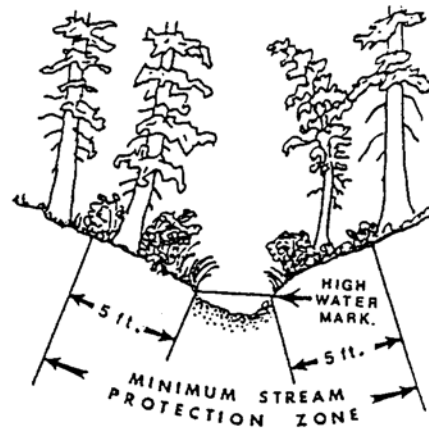
**FIGURE 1**  
**CLASS 1 STREAM PROTECTION ZONE**



(7-1-96)

d. Class II Stream Protection Zone means the area encompassed by a minimum slope distance of thirty (30) feet on each side of the ordinary high water marks. (Figure 2.) For Class II streams that do not contribute surface flow into Class I streams, provide soil stabilization and water filtering effects by leaving undisturbed soils in widths sufficient to prevent washing of sediment. In no case shall this width be less than five (5) feet slope distance on each side of the ordinary high water marks.

FIGURE 2  
CLASS II STREAM PROTECTION ZONE



(7-1-96)

**60. Timber Owner.** A person, partnership, corporation, or association of whatever nature, other than the landowner, that holds an ownership interest in forest tree species on forest land. (10-14-75)

**61. Time of Year of Forest Practice.** Those combinations of months during which time the forest practice is taking place. Points assigned are: October through December - two (2) points; August through September - four (4) points; January through April - seven (7) points; May through July - ten (10) points. (1-24-78)

**011. -- 019. (RESERVED)**

**020. GENERAL RULES.**

**01. Compliance.** Practices contained within a rule shall be complied with to accomplish the purpose to which the rule is related. (8-13-85)

**a.** If conditions of sites or activities require the application of practices which differ from those prescribed by the rules, the operator shall obtain a variance according to the following procedure: (8-13-85)

**i.** The operator shall submit a request for variance to the department in writing. The request shall include a description of the site and particular conditions which necessitate a variance, and a description of proposed practices which, if applied, will result in a violation of the rules. (8-13-85)

**ii.** Within fourteen (14) calendar days the department shall evaluate the request and notify the operator in writing of the determination to allow or disallow the variance request. (7-1-96)

**iii.** All practices authorized under this procedure shall provide for equivalent or better results over the long term than the rules which are superseded to insure site productivity, water quality and fish and wildlife habitat. A variance can be applied only at approved sites. (8-13-85)

**b.** Practices shall also be in compliance with the Stream Channel Alteration Act (Title 42, Chapter 38, Idaho Code), Idaho Water Quality Standards and Waste Water Treatment Requirements (Title 39, Chapter 1, Idaho Code), the Idaho Pesticide Law (Title 22, Chapter 34, Idaho Code), and the Hazardous Waste Management Act of 1983 (Title 39, Chapter 44, Idaho Code), and rules and regulations pursuant thereto. (8-13-85)

c. Water may be diverted from a stream and used at any time to carry out Idaho forest practices and for forest road dust abatement, provided that: 1) The total daily volume diverted is no greater than two-tenths (0.2) acre-feet (65,170 gallons) from a single stream; and 2) The rate of diversion shall never exceed twenty-five (25) percent of the rate of flow then available in the stream at the point of diversion for these purposes. (5-8-09)

i. No person shall, under this Section 020, divert water from an irrigation canal, irrigation reservoir, or other irrigation facility while water is lawfully diverted, stored, captured, conveyed, used or otherwise physically controlled by an irrigator, irrigation district or canal company. (5-8-09)

ii. If water is to be diverted from a stream within a water district, or from a stream from which an irrigation delivery entity diverts water, a person diverting water shall give notice to the watermaster of the intent to divert water for the purposes as authorized herein. (5-8-09)

iii. Water diversion intakes used for diversions under Subsection 020.01 shall be screened with a maximum screen mesh size as follows: 1) fish-bearing Class I streams: 3/32 inch, and 2) all other streams: 1/4 inch. (5-8-09)

d. Any alternative conservation measure having received a favorable Biological Opinion or Incidental Take Permit from the National Marine Fisheries Service or US Fish and Wildlife Service will be considered as complying with these rules. ( )

**02. Conversion of Forest Lands.** Conversions require a notification be filed, and compliance with all rules except those relating to reforestation. On converted parcels larger than one (1) acre, plant acceptable vegetative cover sufficient to maintain soil productivity and minimize erosion. Cover shall be established within one (1) year of completion of the forest practice except that the director may grant an extension of time if weather or other conditions interfere. Within three (3) years of completion of the forest practice, the director shall determine if the conversion has been accomplished by: (7-1-96)

a. The presence or absence of improvements necessary for use of land for its intended purpose; (7-1-96)

b. Evidence of actual use of the land for the intended purpose. (10-14-75)

c. If the conversion has not been accomplished within three (3) years of the completion of harvest, supplemental reforestation Subsection 050.06 applies. (7-1-96)

**03. Annual Review and Consultation.** The director shall, at least once each year, meet with other state agencies and the Forest Practices Advisory Committee and review recommendations for amendments to rules, new rules, or repeal of rules. He shall then report to the board a summary of such meeting or meetings, together with recommendations for amendments to rules, new rules, or repeal of rules. (10-14-75)

**04. Consultation.** The director shall consult with other state agencies and departments concerned with the management of forest environment where expertise from such agencies or departments is desirable or necessary. (10-14-75)

a. The Idaho Water Quality Standards and Wastewater Treatment Requirements, IDAPA 58.01.02, (Title 39, Chapter 1, Idaho Code) reference the Forest Practice Rules as approved best management practices and describe a procedure of modifying the practices based on monitoring and surveillance. The director shall review petitions from Idaho Department of Environmental Quality for changes or additions to the rules according to Administrative Procedures Act (Title 67, Chapter 52, Idaho Code) and make recommendations for modification to the Board of Land Commissioners. (9-20-88)

**05. Notification of Forest Practice.** (10-14-75)

a. Before commencing a forest practice or a conversion of forest lands the department shall be notified as required in Subsection 020.05.b. The notice shall be given by the operator. However, the timber owner or landowner satisfies the responsibility of the operator under this subsection. When more than one forest practice is to

be conducted in relation to harvesting of forest tree species, one notice including each forest practice to be conducted shall be filed with the department. (5-8-09)

**b.** The notification required by Subsection 020.05.a. shall be on forms prescribed and provided by the department and shall include the name and address of the operator, timber owner, and landowner; the legal description of the area in which the forest practice is to be conducted; whether the forest practice borders an outstanding resource water and other information the department considers necessary for the administration of the rules adopted by the board under Section 38-1304, Idaho Code. All notifications must be formally accepted by the department before any forest practice may begin. Promptly upon formal acceptance of the notice but not more than fourteen (14) calendar days from formal acceptance of the notice, the department shall mail a copy of the notice to whichever of the operator, timber owner, or landowner that did not submit the notification. The department shall make available to the operator, timber owner, and landowner a copy of the rules. (7-1-96)

**c.** An operator, timber owner, or landowner, whichever filed the original notification, shall notify the department of any subsequent change in the information contained in the notice within thirty (30) calendar days of the change. Promptly upon receipt of notice of change, but not to exceed fourteen (14) calendar days from receipt of notice, the department shall mail a copy of the notice to whichever of the operator, timber owner, or landowner that did not submit the notice of change. (7-1-96)

**d.** The notification is valid for the same period as set forth in the certificate of compliance under Section 38-122, Idaho Code. At the expiration of the notification, if the forest practice is continuing, the notification shall be renewed using the same procedures provided for in this section. (4-21-92)

**e.** If the notification required by Subsection 020.05.a. of this section indicates that at the expiration of the notification that the forest practice will be continuing, the operator, timber owner, or landowner, at least thirty (30) calendar days prior to the expiration of the notification, shall notify the department and obtain a renewal of the notification. Promptly upon receipt of the request for renewal, but not to exceed fourteen (14) calendar days from receipt of the request, the department shall mail a copy of the renewed notification to whichever of the operator, timber owner, or landowner that did not submit the request for renewal. (7-1-96)

**06. Notification Exception.** A notification of Forest Practice is required except for: (7-1-98)

**a.** Routine road maintenance, recreational uses, grazing by domestic livestock, cone picking, culture and harvest of Christmas trees on lands used solely for the production of Christmas trees, or harvesting of other minor forest products. (10-14-75)

**b.** Non-commercial cutting and removal of forest tree species by a person for his own personal use. (10-14-75)

**c.** Clearing forest land for conversion to surface mining or dredge and placer mining operations under a reclamation plan or dredge mining permit. (9-20-88)

**07. Emergency Forest Practices.** No prior notification shall be required for emergency forest practices necessitated by and commenced during or immediately after a fire, flood, windthrow, earthquake, or other catastrophic event. Within forty-eight (48) hours after commencement of such practice, the operator, timber owner, or landowner shall notify the director with an explanation of why emergency action was necessary. Such emergency forest practices are subject to the rules herein, except that the operator, timber owner, or landowner may take any reasonable action to minimize damage to forest lands, timber, or public resource from the direct or indirect effects of the catastrophic event. (7-1-96)

**08. Duty of Purchaser.** The initial purchaser of forest tree species which have been harvested from forest lands shall, before making such purchase or contract to purchase or accepting delivery of the same, receive and keep on file a copy of the notice required by Section 38-1306, Idaho Code relating to the harvesting practice for which the forest tree species are being acquired by the initial purchaser. Such notice shall be available for inspection upon request by the department at all reasonable times. (7-1-96)

**09. State Divided into Regions.** For the purpose of administering this Act, the State is divided into two



(2) forest regions: one (1) north of the Salmon River and one (1) south of the Salmon River. (7-1-96)

**10. Regions Divided into Forest Habitat Types.** For the purpose of further refining the on-the-ground administration of the Act, the forest regions can be divided into Habitat Types. (7-1-96)

**021. -- 029. (RESERVED)**

**030. TIMBER HARVESTING.**

**01. Purpose.** Harvesting of forest tree species is a part of forest management by which wood for human use is obtained and by which forests are established and tended. It is recognized that during harvesting operations there will be a temporary disturbance to the forest environment. It is the purpose of these rules to establish minimum standards for forest practices that will maintain the productivity of the forest land and minimize soil and debris entering streams and protect wildlife and fish habitat. (10-14-75)

**02. Quality of Residual Stocking.** Reforestation is required if harvesting reduces stocking of acceptable trees below minimums of Subsection 050.04. (7-1-96)

**03. Soil Protection.** Select for each harvesting operation the logging method and type of equipment adapted to the given slope, landscape and soil properties in order to minimize soil erosion. (8-13-85)

**a.** An operation that uses Ground-based skidding equipment shall not be conducted if it will cause rutting, deep soil disturbance, or accelerated erosion. On slopes exceeding forty-five percent (45%) gradient and which are immediately adjacent to a Class I or II stream, ground-based skidding equipment shall not be conducted used except with an approved variance. Where slopes in the area to be logged exceed forty-five percent (45%) gradient the operator, landowner or timber owner shall notify the department of these steep slopes upon filing the notification as provided for in Subsection 020.05. (7-1-96)(    )

**b.** Limit the grade of constructed skid trails on geologically unstable, saturated, or highly erodible or easily compacted soils to a maximum of thirty percent (30%). (7-1-96)

**c.** In accordance with appropriate silvicultural prescriptions, skid trails shall be kept to the minimum feasible width and number. Tractors used for skidding shall be limited to the size appropriate for the job. (8-13-85)

**d.** Uphill cable yarding is preferred. Where downhill yarding is used, reasonable care shall be taken to lift the leading end of the log to minimize downhill movement of slash and soils. (8-13-85)

**04. Location of Landings, Skid Trails, and Fire Trails.** Locate landings, skid trails, and fire trails on stable areas to prevent the risk of material entering streams. (10-14-75)

**a.** All new or reconstructed landings, skid trails, and fire trails shall be located on stable areas outside the appropriate stream protection zones. Locate fire and skid trails where sidecasting is held to a minimum. (3-13-90)

**b.** Minimize the size of a landing to that necessary for safe economical operation. (8-13-85)

**c.** To prevent landslides, fill material used in landing construction shall be free of loose stumps and excessive accumulations of slash. On slopes where sidecasting is necessary, landings shall be stabilized by use of seeding, compaction, riprapping, benching, mulching or other suitable means. (8-13-85)

**05. Drainage Systems.** For each landing, skid trail or fire trail a drainage system shall be provided and maintained that will control the dispersal of surface water to minimize erosion. (4-21-92)

**a.** Stabilize skid trails and fire trails whenever they are subject to erosion, by water barring, cross draining, outsloping, scarifying, seeding or other suitable means. This work shall be kept current to prevent erosion prior to fall and spring runoff. (8-13-85)

**b.** Reshape landings as needed to facilitate drainage prior to fall and spring runoff. Stabilize all

landings by establishing ground cover or by some other means within one (1) year after harvesting is completed. (8-13-85)

**06. Treatment of Waste Materials.** All debris, overburden, and other waste material associated with harvesting shall be left or placed in such a manner as to prevent their entry by erosion, high water, or other means into streams. (10-14-75)

**a.** Wherever possible trees shall be felled, bucked, and limbed in such a manner that the tree or any part thereof will fall away from any Class I streams. Continuously remove slash that enters Class I streams as a result of harvesting operations. Continuously remove other debris that enters Class I streams as a result of harvesting operations whenever there is a potential for stream blockage or if the stream has the ability for transporting such debris. Place removed material five (5) feet slope distance above the ordinary high water mark. (3-13-90)

**b.** Remove slash and other debris that enters Class II streams whenever there is a potential for stream blockage or if the stream has the ability for transporting the debris immediately following skidding and place removed material above the ordinary high water mark or otherwise treat as prescribed by the department. No formal variance is required. (11-7-86)

**c.** Deposit waste material from construction or maintenance of landings and skid and fire trails in geologically stable locations outside of the appropriate Stream Protection Zone. (8-13-85)

**07. Stream Protection.** During and after forest practice operations, stream beds and streamside vegetation shall be protected to leave them in the most natural condition as possible to maintain water quality and aquatic habitat. (8-13-85)

**a.** Lakes require an approved site specific riparian management prescription prior to conducting forest practices within the stream protection zone. (7-1-96)

**b.** Operations that utilize ground-based skidding equipment that result in logs being skidded or forwarded in or through streams shall not be permitted. When streams must be crossed, adequate temporary structures to carry stream flow shall be installed. Cross the stream at right angles to its channel if at all possible. (Construction of hydraulic structures in stream channels is regulated by the Stream Channel Protection Act - Title 42, Chapter 38, Idaho Code). Remove all temporary crossings immediately after use and, where applicable, water bar the ends of the skid trails. (7-1-96)( )

**c.** Operation of ground based equipment shall not be allowed within the Stream Protection Zone except at approaches to stream crossings. (7-1-96)

**d.** When cable yarding is necessary, across or inside the Stream Protection Zones it shall be done in such a manner as to minimize stream bank vegetation and channel disturbance. (8-13-85)

**e.** Provide for large organic debris (LOD), shading, soil stabilization, wildlife cover and water filtering effects of vegetation along streams. (7-1-96)

**i.** Leave hardwood trees, shrubs, grasses, and rocks wherever they afford shade over a stream or maintain the integrity of the soil near a stream. (10-14-75)

**ii.** ~~Leave seventy-five percent (75%) of the current shade over the Class I streams. Limit re-entry until shade recovers.~~ To maintain and enhance shade and large woody debris recruitment, landowners have two options for tree retention. (4-11-06)( )

(1) Option A: Adjacent to all Class I streams, all standing trees, including conifers, hardwoods and snags, will be left within twenty-five (25) feet of the ordinary high water mark on each side, with the exception that small corridors may be opened to facilitate line skidding. Corridors will be kept to a minimum, and the only trees that may be felled within this area are trees needing to be felled to be in compliance with IDAPA 17.08, "Idaho Minimum Safety Standards and Practices for Logging." In the zone twenty-five (25) to fifty (50) feet from the ordinary high water mark on each side of all Class I streams, live conifers and hardwoods will be left to maintain a minimum

relative stocking per acre of forty (40) according to the relative-stocking contribution table below (e.g., in the NGIF forest type, retaining thirty 10-in. trees per acre would contribute six point twenty-seven (6.27) relative stocking; additionally retaining twenty-five (25) 12-in. trees (8.675 relative stocking), twenty (20) 22-in. trees (13.66 relative stocking), and fifteen (15) 26-in. trees (thirteen point seventeen (13.17) relative stocking) would result in a total retention of forty-one point eight (41.8) relative stocking per acre). ( )

(2) Option B: Adjacent to all Class I streams, within seventy-five (75) feet from the ordinary high water mark on each side of all Class I streams, live conifers and hardwoods will be left to maintain a minimum relative stocking per acre of forty-five (45) according to the relative-stocking contribution table below. Landowners are strongly encouraged to retain all trees immediately adjacent to the stream. ( )

(3)

Per Tree Contribution to Relative Stocking by Diameter Class						
Forest Type	8 – 11.9 in.	12 – 15.9 in.	16 – 19.9 in.	20 – 23.9 in.	24 – 27.9 in.	28+ in.
NGIF	0.209	0.347	0.506	0.683	0.878	1.088
CIGF	0.244	0.405	0.590	0.797	1.024	1.270
SIGF	0.293	0.486	0.708	0.957	1.229	1.524
WH	0.267	0.442	0.644	0.870	1.117	1.385
DF	0.326	0.540	0.787	1.063	1.366	1.693

( )

(4) Adjacent to all Class II streams, standing trees less than 8” DBH (including conifers and hardwoods) and shrubs will be left within thirty (30) feet on each side to the extent practicable given safety considerations and the site-specific plans for fire hazard compliance and regeneration. These areas are required to meet the minimum stocking requirements of Subsection 050.04 or are subject to the supplemental reforestation requirements of Subsection 050.06. For those Class II streams that require a minimum five (5) foot stream protection zone, no standing trees are required. ( )

iii. During harvesting, carefully remove timber from the Stream Protection Zone in such a way that large organic debris, shading and filtering effects are maintained and protected. When portions of felled trees fall into or over a Class I stream, leave the portion consistent with the LOD definition of Subsection 010.35. (4-11-06)

iv. When harvesting portions of trees that have fallen naturally into or over a Class I stream, leave the portion(s) over the stream consistent with the LOD definition of Subsection 010.35. Leaving the section with the root ball attached is preferred. (4-11-06)

v. During harvesting operations, portions of felled or bucked trees not meeting the LOD definition shall be removed, consistent with the slash removal requirements of Subsection 030.06. (4-11-06)

~~vi. Standing trees, including conifers, hardwoods and snags will be left within fifty (50) feet of the ordinary high water mark on each side of all Class I streams, and within thirty (30) feet on each side of those Class II streams that require thirty (30) feet stream protection zones, in the following minimum numbers per one thousand (1000) feet of stream:~~

~~Minimum Standing Trees Per One Thousand (1000) Feet Required (each side)~~

Tree Diameter (DBH)	—STREAM WIDTH—			
	Class I			Class II*
	Over 20'	10'–20'	Under 10'	
3–7.9"	200	200	200	140
8–11.9"	42	42	42	--
12–19.9"	24	24	--	--
20"+	4	--	--	--

\*For those Class II streams that require a minimum five (5) foot stream protection zone, no standing trees are required. (4-11-06)(\_\_\_\_)

~~vii.~~ Snags will be counted as standing trees in each diameter class if snag height exceeds one and one-half (1½) times the distance between the snag and the stream's ordinary high water mark. Not more than fifty percent (50%) of any class may consist of snags. (7-1-96)

~~vi#.~~ To obtain a variance from the standing tree and shade requirements, the operator must develop a site specific riparian management prescription and submit it to the department for approval. The prescription should consider stream characteristics and the need for large organic debris, stream shading and wildlife cover which will achieve the objective of these rules. (4-11-06)

~~vii.~~ Where the opposite side of the stream does not currently meet the minimum standing tree requirements of the table, the department and the operator should consider a site specific riparian prescription that meets the large organic debris needs of the stream. (3-13-90)

~~viii.~~ Stream width shall be measured as average between ordinary high water marks. (3-13-90)

f. Direct ignition of prescribed burns will be limited to hand piles within stream protection zones (SPZ), all other direct ignitions shall occur outside of SPZs, so a backing (cooler) fire will more likely occur within the SPZ. (4-11-06)

i. Hand piles shall be at least five (5) feet from the ordinary high water-mark of streams. (4-11-06)

ii. No mechanical piling of slash or natural forest fuels is allowed in a SPZ (an exception is filter windrows for erosion control which shall not be ignited. (4-11-06)

**08. Maintenance of Productivity and Related Values.** Harvesting practices will first be designed to assure the continuous growing and harvesting of forest tree species by suitable economic means and also to protect soil, air, water, and wildlife resources. (10-14-75)

a. Where major scenic attractions, highways, recreation areas or other high-use areas are located within or traverse forest land, give special consideration to scenic values by prompt cleanup and regeneration. (10-14-75)

b. Give special consideration to preserving any critical ~~wildlife~~ or aquatic or wildlife habitat, including snags, especially within stream protection zones. Wherever practical, preserve fruit, nut, and berry producing trees and shrubs. (10-14-75)(\_\_\_\_)

c. Avoid conducting operations along or through bogs, swamps, wet meadows, springs, seeps, wet draws or other ~~sources~~ locations where the presence of water is indicated; by associated vegetation; temporary crossings can be used as referred to in Paragraph 030.07.b. ~~Protect~~ Protect soil and vegetation from disturbance which would cause adverse affects on water quality, quantity and wildlife and aquatic habitat. (7-1-96)(\_\_\_\_)

d. Clear-cutting Harvesting operations within a single ownership, in which essentially all trees have been removed in one operation, shall be planned so that adequate wildlife escape cover (e.g. topography, vegetation, stream protection zones, etc.) is available within one-quarter (1/4) mile. (4-11-06)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**050. RESIDUAL STOCKING AND REFORESTATION.**

**01. Purpose.** The purpose of these rules is to provide for residual stocking and reforestation that will maintain a continuous growing and harvesting of forest tree species by describing the conditions under which reforestation will be required, specifying the minimum number of acceptable trees per acre, the maximum period of time allowed after harvesting for establishment of forest tree species, and for sites not requiring reforestation, to maintain soil productivity and minimize erosion. (7-1-96)

**02. Quality of Residual Stocking.** On any operation, trees left for future harvest shall be of acceptable species and adequately protected from harvest damage to enhance their survival and growth. This may be accomplished by locating roads and landings and by conducting felling, bucking, skidding, yarding, and decking operations so as to minimize damage to residual trees. Acceptable residual trees should have a minimum live crown ratio of thirty percent (30%), minimum basal scarring, and should not have dead or broken tops. When stands have a high percentage of unacceptable trees, consider stand replacement rather than intermediate cuttings. (7-1-96)

**03. Sites Unpractical to Reforest.** Sites unpractical to reforest, generally ponderosa pine and drier Douglas-fir habitat types, shall not be harvested below minimum stocking, unless the site is converted to some other land use, or in instances of wildfire, insects, disease or other natural causes where salvage of the damaged timber is planned. (7-1-96)( )

**a.** When harvesting timber on these sites, one (1) of the following actions must be taken: ( )

**i.** Establish a new stand by leaving seed trees on the site and inter-planting at least once within five (5) years of completing the harvest, if needed to meet minimum stocking. ( )

**ii.** Establish a new stand of timber by planting the site with an acceptable tree species, and inter-planting at least once within five (5) years of the original planting, if needed to meet minimum stocking. ( )

**b.** If the efforts listed in Subparagraphs 050.03.a.i. and 050.03.a.ii. fall short of meeting the minimum stocking level, the landowner will be encouraged, but not required, to meet the minimum stocking level through additional reforestation efforts. ( )

**04. Stocking.** Stocking will be deemed satisfactory adequate immediately following harvest if the following number of acceptable trees per acre, within each specified region, for at least one (1) size class, are reasonably well-spaced distributed over the area affected by forest harvesting. (NOTE: (1) DBH = Average Diameter (outside of the bark) of a tree four and one half (4.5) feet above mean ground level):

**MINIMUM STOCKING - ACCEPTABLE TREES**

<u>Average Size Class DBH (1) — Inches</u>	<u>Average Number Trees Per Acre</u>	<u>Average Spacing In Feet</u>
<i>2.0 and smaller</i>	<i>170</i>	<i>16 x 16</i>
<i>3.0 and greater</i>	<i>110</i>	<i>20 x 20</i>
<i>5.0 and greater</i>	<i>60</i>	<i>27 x 27</i>
<i>8.0 and greater</i>	<i>35</i>	<i>35 x 35</i>
<i>11.0 and greater</i>	<i>20</i>	<i>47 x 47</i>

<u>Idaho Region</u>	<u>Size Class DBH (inches)</u>	<u>Average Number of Retained Trees Per Acre</u>	<u>Average Spacing (feet)</u>
<u>North</u>	<u>0" – 2.9"</u>	<u>170</u>	<u>16 x 16</u>
<u>South</u>	<u>0" – 2.9"</u>	<u>125</u>	<u>18 x 18</u>
<u>North</u>	<u>3.0" – 10.9"</u>	<u>110</u>	<u>19 x 19</u>
<u>South</u>	<u>3.0" – 10.9"</u>	<u>75</u>	<u>24 x 24</u>
<u>North</u>	<u>11.0" and greater</u>	<u>20</u>	<u>46 x 46</u>
<u>South</u>	<u>11.0" and greater</u>	<u>15</u>	<u>53 x 53</u>

If immediately following harvest, the stand consists of retained trees of mixed size classes that are reasonably well distributed over the harvested area, and none of the size classes individually equal or exceed the minimum trees per acre shown above, stocking will also be deemed adequate if the weighted total of all of the size classes of the retained trees exceeds a value of one hundred seventy (170) for a stand in the North Region and one hundred twenty-five (125) in the South Region. The weighted total is calculated by multiplying the number of retained trees per acre in each size class by the weighting factors below, and adding all of these size class totals together.

<u>Size Class</u>	<u>Weight</u>
<u>0" – 2.9"</u>	<u>1</u>
<u>3.0" – 10.9"</u>	<u>1.6</u>
<u>11.0" and greater</u>	<u>8.4</u>

Harvested stands which are not adequately stocked, as defined above, will be subject to supplemental reforestation requirements specified in Subsection 050.06. Minimum stocking requirements for Class I stream protection zones are specified in Subparagraph 030.07.e.ii. (7-1-96)( )

- 05. Reforestation Exemptions.** (7-1-96)
- a.** Reforestation is not required for: (7-1-96)
- i.** Noncommercial forest land; (7-1-96)
- ii.** Land converted to another use. This may include land converted to roads used in a forest practice; (7-1-96)

iii. A forest practice which will result in ten (10) acres or less below minimum stocking levels. (7-1-96)

b. On lands exempted under Subsection 050.03, where reforestation is not being planned, some form of grass or planted cover shall be established within one (1) year in order to maintain soil productivity and minimize erosion. (7-1-96)

**06. Supplemental Reforestation.** Seeding and/or planting may be required if after three (3) growing seasons from the date of harvest, stocking levels do not meet the standards in Subsection 050.04. Required seeding and/or planting shall be completed before the end of the fifth growing season following the time of harvest, except that the director shall grant an extension of time if suitable seeds or seedlings are not available or if weather or other conditions interfere. (7-1-96)

a. Reforestation practices must insure seedlings become established. This can be accomplished by adequate site preparation, utilizing acceptable seed or seedlings, following accepted planting or sowing practices, or by other suitable means. (7-1-96)

b. The party responsible for reforestation is the ~~person, partnership, corporation, or association of whatever nature that directed the area be harvested below minimum~~ landowner during the harvest which reduced stand stocking below the minimum levels stated in Subsection 050.04. (7-1-96)(    )

## IDAPA 20 - DEPARTMENT OF LANDS

### 20.03.14 - RULES GOVERNING GRAZING, FARMING, CONSERVATION, NONCOMMERCIAL RECREATION, AND COMMUNICATION SITE LEASES

DOCKET NO. 20-0314-1201

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 58-104(6) and 58-105, Idaho Code.

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

**Wednesday, October 10, 2012, 6:00 p.m.**

**Idaho Department of Lands  
300 N 6th Street, Suite 103, Boise**

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

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

The Department has drafted proposed changes to the current rule to be used as a starting point for negotiation. Key changes include:

- Addition of requirements for management proposals per Senate Bill 1271 to Subsection 020.02.
- Clarification of the appeals process procedures associated with conflicted lease applications in Subsection 020.02.
- Rewording of Subsection 040.01 – Rental, to broaden language applicable to multiple lease activities.
- Removal of Section 021 - Rights Reserved to the Department, which is addressed contractually through the Department's lease templates.
- Removal of Section 054 - Cropland Lease Hardship Claims, which will be addressed programmatically.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 in the June 6, 2012, Idaho Administrative Bulletin, [Volume 12-6, page 27](#); and the July 4, 2012, Idaho Administrative Bulletin, [Volume 12-7, page 106](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Neil Crescenti at (208) 334-0278 or [ncrescenti@idl.idaho.gov](mailto:ncrescenti@idl.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.



DATED this 31st day of August, 2012.

Neil Crescenti  
Program Manager, Grazing, Farming and Conservation  
Idaho Department of Lands  
300 N 6<sup>th</sup> Street, Suite 103  
P.O. Box 83720, Boise, ID 83720-0050  
(208) 334-0278 / Fax (208) 334-3698  
[ncrescenti@idl.idaho.gov](mailto:ncrescenti@idl.idaho.gov)

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**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 20-0314-1201**

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited as IDAPA 20.03.14, “Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases.” (3-12-10)

**02. Scope.** These rules constitute the Idaho Department of Lands’ administrative procedures for leasing of state endowment trust land for grazing, 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~~ twenty (~~20~~) 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. (~~3-12-10~~)(      )

**(BREAK IN CONTINUITY OF SECTIONS)**

**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. (3-12-10)

**03. 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)

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

**05. Conflict Application.** An application to lease state endowment trust land for grazing, farming, conservation, noncommercial recreation or communication site use when one (1) or more applications have been submitted for the same parcel of state endowment trust land and for the same or an incompatible use. (3-12-10)

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

07. **Director.** The Director of the Department of Lands, or such representative as may be designated by the Director. (3-13-02)
08. **Extension.** An approved delay in the due date of the rental owed on a farming lease without risk of loss of the lease. (3-12-10)
09. **Improvement Valuation.** The ~~Land Board approved~~ process or processes of estimating the value of Department authorized improvements associated with a lease, as defined in Section 102. ~~(3-12-10)~~( )
10. **Lease.** A written agreement between the Department and a person containing the terms and conditions upon which the person will be authorized to use state endowment trust land. (3-12-10)
11. **Herd Stock.** Livestock leased or managed, but not owned, by the lessee. (3-13-02)
12. **Lease Application.** An application to lease state endowment trust land for grazing, farming, conservation, noncommercial recreation, or communication site purposes. (3-12-10)
13. **Manageable Unit.** A unit of state endowment trust land designated by the Department, geographically configured and sufficiently large to achieve the proposed use. (3-12-10)
14. **Management Plan.** The signed state endowment trust land lease for grazing, farming and conservation, and any referenced attachments such as annual operating plans or federal allotment management plans, shall be considered the management plan. ( )
- ~~15.~~ **Mortgage Agreement.** Department authorization for the lessee to obtain a mortgage on a state endowment trust land lease. ~~(3-12-10)~~( )
- ~~16.~~ **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)
17. **Proposed Management Plan.** A document written and submitted by the lease applicant detailing the management objectives and strategies associated with their proposed activity. ( )
- ~~18.~~ **Sublease.** An agreement in which the state endowment trust land 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~~ 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 delinquent on any payments to~~ such person is not then in default of any contract with the Department of Lands; provided further, that the Department may, in its discretion, exclude any person in breach of any contract with the state of Idaho or any department or agency thereof. 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)~~( )
02. **Application Process.** All lease applications 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: (3-12-10)

**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. (3-12-10)

**c.** Proposed Management Plan. All applicants for state grazing, farming and conservation leases shall submit a proposed management plan with their application. Where current lessee is an applicant, the Department will recognize the existing management plan, as described by the existing lease provisions, as the proposed management plan required to complete the lease application. The Department may require amendments to the proposed management plan in accordance with Subsections 020.02.e. and 020.02.f. ( )

**d.** 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, the application shall be considered invalid. (3-12-10)

**d.e.** Nonconflicted Applications. (3-12-10)

**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. (3-12-10)

**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 management plan. (3-12-10)( )

**e.** Conflicted Applications. (3-12-10)

**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 management plan. (3-12-10)( )

**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: (3-12-10)

(1) The applicant's proposed use and the compatibility of that use of the state endowment trust parcel land 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. (3-12-10)( )

(2) The applicant's legal access to and/or control of state endowment trust land or other resources that will facilitate the proposed use and is relevant to generating maximum return to trust beneficiaries. (3-12-10)( )

(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. (3-12-10)

(4) Potential environmental and land management constraints that may affect or be relevant to assessing the efficacy or viability of the proposed use. (3-12-10)

(5) Mitigation measures designed to address trust management concerns such as: (3-12-10)

(a) Construction of improvements at lessee's expense. (3-12-10)

(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. (3-12-10)

(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. (3-12-10)

(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. (3-12-10)

(6) Any other factors the Department deems relevant to the management of the state endowment trust ~~parcel~~ land for the proposed use. (3-12-10)(    )

**fg.** 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. If the appeal is denied, the applicant may continue with the auction process by accepting the lease terms and conditions initially offered by the Department. No auction shall be held until the Land Board resolves any such appeal. (3-12-10)(    )

**03. Expiring Leases.** Lease 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 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. (3-12-10)

**04. Rental Deposit.** (3-13-02)

**a.** Existing Lessee. If the existing lessee is the sole applicant, the 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 is awarded the lease by the Land Board, the lessee must deposit, with the Department, the estimated first year's rental for the lease at the time the lease is submitted to the Department with lessee's signature. (3-12-10)

**b.** New Applicants. (3-12-10)

**i.** Expiring Lease. New applicants for expiring leases must submit the estimated first year's rental to the Department at the time of the application's submission. (3-12-10)

**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, all applicants must deposit, with the Department, the estimated first year's rental for the lease prior to auction.~~ (3-12-10)(    )

**~~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)~~

**022<sup>1</sup>. LENGTH OF LEASE.**

The Department may issue a lease for any period of time up to the maximum term provided by law. (3-12-10)

**023<sup>2</sup>. -- 029. (RESERVED)**

**030. CHANGE IN LAND USE.**

The Director may 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. (3-12-10)

~~01. **Termination of Existing Lease.** In case of 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 a change in land use, improvement credit will be addressed in accordance with these rules. (3-12-10)~~

**031. -- 039. (RESERVED)**

040. RENTAL.

01. **Rental Rates.** ~~Rental rates shall be~~ The methodology used to calculate 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)( )

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,~~ shall be determined by the Department. (3-13-02)( )

03. **Rental Due Date.** Lease rentals are due in accordance with the terms of the lease. (3-12-10)

(BREAK IN CONTINUITY OF SECTIONS)

050. LEASE CANCELLATION.

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

01. **Non-Compliance.** 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)( )

02. **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 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 a change in land use, the lessee will be entitled to a prorated refund of the premium bid for a conflicted lease. (3-12-10)

03. **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. (3-12-10)

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

(BREAK IN CONTINUITY OF SECTIONS)

053. EXTENSIONS OF ANNUAL FARMING LEASE PAYMENT.

01. **Farming Lease Extensions.** An extension of the annual lease payment may be approved for 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. (3-12-10)

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.~~ (3-12-10)( )

**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)~~

**0554. -- 059. (RESERVED)**

**(BREAK IN CONTINUITY OF SECTIONS)**

**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 **endowment trust** 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~~ **the** 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 **and may be initiated by lessee's request.** (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)( )

**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)( )

**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)

**(BREAK IN CONTINUITY OF SECTIONS)**

**105. CONFLICT AUCTIONS.**

**01. Two or More Applicants.** When two (2) or more eligible applicants apply to lease the same state endowment trust land for grazing, farming conservation, noncommercial recreation, or communication site purposes and the Department determines the proposed uses are not compatible, the Department shall hold an auction. (3-12-10)

**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. (3-12-10)

**04. 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)

**05. Withdrawal Prior to or Failure to Participate in an Auction.** Applicants who either withdraw their applications after accepting the Department offered lease per Subsection 020.02 of this rule and prior to the auction which results in no need to schedule an auction or cancellation of a scheduled auction; or applicants who fail to participate at the auction by not submitting a bid which results in only one (1) participant at the scheduled auction, shall forfeit an amount equal to the lesser of the following: (3-12-10)( )

**a.** The Department's cost of making any required improvement credit valuation; (3-12-10)

**b.** For existing lessee applicants, any improvement credit payment that would otherwise be due if not awarded the lease; or (3-12-10)

**c.** For conflict applicants, the rental deposit made. (3-12-10)

**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. (3-12-10)

**07. Auction Procedures.** The Department shall prescribe the procedures for conducting conflicted



lease auctions. (3-12-10)

**08. Withdrawal After Auction.** (3-12-10)

**a.** If the high bidder withdraws or refuses to accept the lease, the high bid payment will be retained by the Department. (3-12-10)

**i.** If the auction involved only two (2) participants, the second high bidder shall be awarded the lease. (3-12-10)

**ii.** If the auction involved more than two (2) participants, the lease will be reauctioned. (3-12-10)

**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. (3-12-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**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 state endowment trust land in accordance with Title 22, Chapter 24, Idaho Code. (~~3-12-10~~)(    )

**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. Control of noxious weeds on state grazing lands shall be shared by the lessee and Department, with the Department's share subject to funds appropriated for that purpose. (3-13-02)

**(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 parcel state endowment trust land, or the occupation of the leased parcel by any of the lessee's agents or by any person occupying the same with the lessee's permission. (~~3-12-10~~)(    )

## IDAPA 20 - DEPARTMENT OF LANDS

### 20.03.15 - THE ISSUANCE OF GEOTHERMAL RESOURCE LEASES

DOCKET NO. 20-0315-1201

#### 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 58-104(6), 58-105, and 47-1603, Idaho Code.

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

<b>Thursday, October 11, 2012, 6:00 p.m.</b>
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<b>Idaho Department of Lands 300 N 6th Street, Suite 103, Boise</b>
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The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

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

The Department has drafted and negotiated proposed changes to the current rule. Key changes include deletion of the following three sections which were the focus of industry's concerns.

- Section 055.06 – Shut Downs
- Section 55.08 – Sampling
- Section 056.04 – By-products

As a result of the recent Supreme Court Decision (Wasden v. State Board of Land Commissioners) regarding the constitutionality of Section 58-310A, Idaho Code, the Department is proposing the deletion of Section 022, Lease Award Through Auction. Other proposed deletions relate to “contract” language that is more appropriately addressed in the lease template. Site and condition-specific language will be negotiated with applicants on a case-by-case basis. Another proposed change includes clarifying the requirements and process for lease assignments (Section 075).

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 July 4, 2012 Idaho Administrative Bulletin, Volume No. 12-7, page 107.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Bob Pietras at (208) 334-0279 or [bpietras@idl.idaho.gov](mailto:bpietras@idl.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 31st day of August, 2012.

Bob Pietras  
Program Manager, Commercial-Energy Resources  
Idaho Department of Lands  
300 N 6<sup>th</sup> Street, Suite 103  
P.O. Box 83720, Boise, Idaho 83720-0050  
(208) 334-0279/ Fax (208) 334-3698  
[bpietras@idl.idaho.gov](mailto:bpietras@idl.idaho.gov)

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 20-0315-1201

**001. TITLE AND SCOPE.**

**01. Title.** These rules will be cited as IDAPA 20.03.15, "Rules Governing Geothermal Leasing on Idaho State Lands." (3-21-12)

**02. Scope.** These rules apply to the exploration and extraction of any and all geothermal resources situated in state-owned mineral lands. (3-21-12)

**03. Other Laws.** ~~Operators engaged in the leasing, exploration, and extraction of state owned geothermal resources must~~ In addition to these rules, the Lessee shall comply with all applicable federal, state and local laws, ~~and rules of the State of Idaho including, but not limited to, the following:~~ and regulations. The violation of any applicable law, rule or regulation shall constitute a breach of any lease issued in accordance with these rules. (3-21-12)(      )

~~a. Idaho water quality standards and waste water treatment requirements established in Title 39, Chapter 1, Idaho Code; IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements"; and IDAPA 58.01.11, "Ground Water Quality Rule," administered by the IDEQ. (3-21-12)~~

~~b. Requirements and procedures for hazardous and solid waste management, as established in Title 39, Chapter 44, Idaho Code, and rules promulgated thereunder including, IDAPA 58.01.05, "Rules and Standards for Hazardous Waste" and IDAPA 58.01.06, "Solid Waste Management Rules," administered by the IDEQ. (3-21-12)~~

~~e. Idaho Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code, and applicable rules as promulgated and administered by the IDWR. (3-21-12)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS.**

**01. Associated By-Products or By-Product:** (3-21-12)  
**a.** Any mineral or minerals (exclusive of oil, hydrocarbon gas, and helium), which are found in solution or developed in association with geothermal resources; or (3-21-12)

**b.** Demineralized or mineralized water. (3-21-12)

**02. Available State Lands.** All state lands except those state lands already leased. (3-21-12)

**03. Board.** The Idaho State Board of Land Commissioners or its designee. (3-21-12)

**04.** Casual Exploration. Casual exploration means entry and/or exploration which does not appreciably disturb or damage the land or resources thereon. Casual exploration includes, but is not limited to, geochemical and/or geophysical exploration techniques, sampling with hand tools, and entry using wheeled vehicles for transportation to conduct such exploration. ( )

**045.** **Completion.** A well is considered to be completed thirty (30) days after drilling operations have ceased and the drill rig is removed from the premises or thirty (30) days after the initial production or injection test has been completed, whichever occurs last. (3-21-12)

**056.** **Department.** The Idaho Department of Lands or its designee. (3-21-12)

**067.** **Director.** The head of the Idaho Department of Lands or his designee. (3-21-12)

**078.** **Direct Use.** The use of geothermal resources for direct applications, including, but not limited to, road surface heating, resorts, hot spring bathing and spas, space heating of buildings, recreation, greenhouse warming, aquaculture, or industrial applications where geothermal heat is used in place of other energy inputs. (3-21-12)( )

**089.** **Electrical Generation.** The use of geothermal resources to either directly generate electricity or to heat a secondary fluid and use it to generate electricity. (3-21-12)

**0910.** **Field.** A geographic area overlying a geothermal system with one (1) or more geothermal reservoirs or pool, including any porous, permeable geologic layer, which may be formed along one (1) fault or fracture, or a series of connected faults or fractures. (3-21-12)( )

**101.** **Geothermal Resources.** The natural heat energy of the earth, the energy, in whatever form, which may be found in any position and at any depth below the surface of the earth present in, resulting from, or created by, or which may be extracted from, such natural heat, and all minerals in solution or other products obtained from the material medium of any geothermal resource. When used without restriction, it includes associated by-products. (9-3-91)

**112.** **Lease.** A lease covering the geothermal resources and associated by-products in state lands. (9-3-91)

**123.** **Lessee.** The person to whom a geothermal lease has been issued and his successor in interest or assignee. It also means any agent of the lessee or an operator holding authority by or through the lessee. (9-3-91)

**134.** **Market Value.** The most probable price at a specified date, in cash, or on terms reasonably equivalent to cash, for which the property or commodity should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. (3-21-12)

**145.** **Motorized Earth-Moving Equipment.** Backhoes, bulldozers, front-loaders, trenchers, core drills, drill rigs, power augers, and other similar equipment. (3-21-12)

**16.** Navigable Water Courses. The state owned beds of active lakes, rivers and streams which do not include formerly submerged lands where the state retains ownership. ( )

**157.** **Operator.** The person having control or management of operations on the leased lands or a portion thereof. The operator may be the lessee, designated operator, or agent of the lessee, or holder of rights under an approved operating agreement. (9-3-91)

**168.** **Overriding Royalty.** An interest in the geothermal resource produced at the surface free of any cost of production. It is a royalty in addition to the royalty reserved to the state. (9-3-91)

**179.** **Person.** Any natural person, corporation, association, partnership, or other entity recognized and authorized to do business in Idaho, receiver, trustee, executor, administrator, guardian, fiduciary, or other

representatives of any kind, and includes any government or any political subdivision of any agency thereof. The masculine gender, in referring to a person, includes the feminine and the neuter genders. (3-21-12)(\_\_\_\_)

~~18~~**20. Record Title.** The publicly recorded lease which is the evidence of right that a person has to the possession of the leased property. (9-3-91)

~~19~~**21. Reservoir or Pool.** A porous, permeable geologic layer containing geothermal resources. (3-21-12)

~~20~~**2. Shut In.** To close the valves at the wellhead so that the well stops flowing or producing. Also describes a well on which the valves have been closed. (3-21-12)

~~21~~**3. State Lands.** Without limitation, lands in which the title to the mineral rights are owned by the state of Idaho and are under the jurisdiction and control of the Board or under the jurisdiction and control of any other state body or agency, having been obtained from any source and by any means whatsoever, including the beds of navigable waters of the state of Idaho. (9-3-91)

~~22~~**4. Waste.** Any physical loss of geothermal resources including, but not limited to: (3-21-12)

**a.** Underground loss of geothermal resources resulting from inefficient, excessive, or improper use, or dissipation of geothermal energy, or of any geothermal resource pool, reservoir, or other source; or the locating, spacing, constructing, equipping, operating, or producing of any well in a manner which results, or tends to result in reducing the quantity of geothermal energy to be recovered from any geothermal area in the state; (3-21-12)

**b.** The inefficient above-ground transporting and storage of geothermal energy; and the locating, spacing, equipping, operating, or producing of any well or injection well in a manner causing or tending to cause unnecessary or excessive surface loss or destruction of geothermal energy; the escape into the open air from a well of steam or hot water in excess of what is reasonably necessary in the efficient development or production of a well. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

~~020.~~ **APPLICABILITY.**

~~01.~~ **Other Geothermal Resources.** *These rules apply to all geothermal resources where other rules and regulations are silent or where the geothermal resource is otherwise regulated.* (9-3-91)

~~02.~~ **Exclusions.** *These rules do not apply to the application and leasing of other mineral resources covered by Title 47, Chapter 7, Idaho Code, nor the application and leasing of oil and gas resources covered by Title 47, Chapter 8, Idaho Code.* (9-3-91)

~~021.~~ **QUALIFIED APPLICANTS AND LESSEES.**

*Any person as defined in Subsection 010.17 of this rule, is qualified to lease the geothermal resources in state lands or take or hold an interest therein unless the Board first determines, after notice and hearing, for good cause shown, that a person is disqualified from leasing or taking or holding an interest in geothermal resources in state lands. No member of the Board, the director, or employee of the department may take or hold any such lease or interest in state lands. Any person legally competent to contract may submit an application to lease state land provided such person is not then in default of any contract with the state of Idaho or any department or agency thereof.* (3-21-12)(\_\_\_\_)

~~022.~~ **LEASE AWARD THROUGH AUCTION.**

~~01.~~ **Auctions Required.** *Except for requests to the Board as described in Subsection 022.02 of these rules, all leases must be awarded through a public action. Collusion between bidders is a violation of these rules and may result in the department voiding the auction results and cancelling any leases that were issued.* (3-21-12)

~~02. **Leasing Additional Lands.** Leases may be issued without going to auction in any of the following situations:~~ (3-21-12)

~~a. A tract that was offered at auction but not awarded is available for application and leasing for one (1) year following the auction.~~ (3-21-12)

~~b. An existing geothermal lessee who is in production and paying royalties to the state may request that the board issue them additional geothermal leases for unleased state lands located adjacent to the producing leases and in the same geothermal field as the leased lands.~~ (3-21-12)

~~c. A person who has leased private and federal lands that adjoin or encompass state lands may request that the board issue them geothermal leases for any unleased and adjoining state lands located in the same geothermal field. The request will not be unreasonably denied.~~ (3-21-12)

~~023~~1. -- 029. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

**035. RENTALS.**

**01. Advance Annual Rental.** Lessee will pay to the state of Idaho Department in advance each year an annual rental. The annual rental for the first year of the term will be due and payable and will be received ~~in the offices of the department in Boise~~ by the Department, together with a lease agreement executed by lessee within thirty (30) days of the date of notice of approval or award. ~~The department will notify the applicant or his representative designated in the application to lease by certified or registered mail of the Board's approval of a lease and specify the exact amount of rental due thereon. Failure to return an executed lease together with the first year rental within thirty (30) days will result in automatic rejection of the application without further action of the Department or Board.~~ Second year and subsequent rental payments must be received ~~in the office of the department in Boise~~ by the Department on or before the anniversary date of the lease. (3-21-12)(    )

**02. Amount.** Annual rentals will be set by the Board through competitive bidding, negotiation, fixed amounts, formulas, or some other method of valuation which a prudent investor might reasonably apply to establish such rental amounts. (3-21-12)(    )

**036. ROYALTIES.**

**01. Royalty Payments.** The lessee will cause to be paid to the state of Idaho Department royalties on the value of geothermal production from the leased premises. The royalty rate will be established by the Board based on the market value of the geothermal resources produced from the lands under lease. The royalties specified in geothermal leases will be fixed in any manner by the ~~state~~ Board of land commissioners, including but not limited to competitive bidding, negotiation, fixed amounts, or formulas. Royalty rates may be adjusted through the term of the lease in order to keep pace with market values. When leases are issued, the following guidelines will be used for royalty rates not subject to competitive bidding: (3-21-12)(    )

**a.** A royalty of between five percent (5%) and twenty percent (20%) of the amount or value of geothermal resources, or any other form of heat or energy excluding electrical power generation, derived from production under the lease and sold or utilized by the lessee or reasonably susceptible to sale or utilization by the lessee; (3-21-12)

**b.** A royalty of between two percent (2%) and fifteen percent (15%) of the amount or value of any associated by-product derived from production under the lease and sold or utilized or reasonably susceptible of sale or utilization by the lessee, including commercially demineralized water. (3-21-12)

c. A royalty of between two percent (2%) and five percent (5%) of gross receipts for sale of electrical power. (3-21-12)

**02. Calculation of Value.** The value of geothermal production from the leased premises for the purpose of computing royalties shall be based on a total of the following: (9-3-91)(\_\_\_\_)

a. The total consideration accruing to the lessee from the sale ~~thereof in cases where~~ of geothermal resources ~~are sold by the lessee~~ to another party in an arms-length transaction; or (9-3-91)(\_\_\_\_)

b. The value of the end product attributable to the geothermal resource produced from a particular lease where geothermal resources are not sold by the lessee before being utilized, but are instead directly used in manufacturing power production, or other industrial activity; ~~or~~ and (9-3-91)(\_\_\_\_)

c. The value of all renewable energy credits or similar incentives based on a proportionate share of the leased lands in the entire project area qualifying for the credits. (3-21-12)

~~d. When a part of the resource only is utilized by the lessee and the remainder sold, the sum of Paragraphs 036.02.a. through 036.02.e. of this rule. (3-21-12)~~

**03. Due Date.** Royalties will be due and payable monthly ~~in the office of~~ to the ~~d~~Department ~~in Boise~~ on or before the last day of the calendar month following the month in which the geothermal resources and/or their associated by-products are produced and utilized or sold. (9-3-91)(\_\_\_\_)

**04. Utilization of Geothermal Resources.** The lessee must file with the Department within thirty (30) days after execution a copy of any contract for the utilization of geothermal resources from the lease. Reports of sales or utilization by lessee and royalty for each productive lease must be filed each month once production begins, even though production may be intermittent, unless otherwise authorized by the Department. Total volumes of geothermal resources produced and utilized or sold, including associated by-products, the value of production, and the royalty due the state of Idaho must be shown. This report is due on or before the last day of the month following the month in which production was obtained and sold or utilized, together with the royalties due the state of Idaho. (3-21-12)

**05. Measurement.** The lessee will measure or gauge all production in accordance with methods approved by the Department. The quantity and quality of all production will be determined in accordance with the standard practices, procedures and specifications generally used in industry. All measuring equipment must be tested consistent with industry practice and, if found defective, the Department will determine the quantity and quality of production from the best evidence available. (3-21-12)

**06. By-Product Testing.** The lessee will periodically furnish the Department the results of periodic tests showing the content of by-products in the produced geothermal resources. Such tests will be taken as specified by the Department and by the method of testing approved by him, except that tests not consistent with industry practices will be conducted at the expense of the ~~state of Idaho~~ Department. (3-21-12)(\_\_\_\_)

**07. Commingling.** The Department may authorize a lessee to commingle production from wells on his State lease(s) with production from non-state lands. Department approval of commingling will not be unreasonably withheld, and will consider the following: (3-21-12)

a. The operator's economic necessity of commingling; (3-21-12)

b. The type of geothermal use proposed for the commingled waters; and (3-21-12)

c. Sufficient measurement and accounting of all the commingled waters to ensure that the Department is appropriately compensated by royalties. (3-21-12)

**037. -- 039. (RESERVED)**

**040. SIZE OF A LEASABLE TRACT.**

**01. Surface Area.** Geothermal leases are not limited in surface area. The Board will determine the surface area of a lease after consultation with other state agencies and prospective lessees. The probable extent of a geothermal reservoir, the surface area needed for a viable project, and other relevant factors will be used to help determine lease surface area. (3-21-12)

**02. Navigable Water Courses.** Geothermal resources leases may be issued for state lands underlying navigable water courses in Idaho. Such lands are considered “state lands” and will be leased in accordance with these rules. Operations in the beds of navigable water courses will not be authorized except in *extraordinary necessary* circumstances and then only with express written approval of the Board upon such conditions and security as the Department deems appropriate. (3-21-12)(    )

~~041. -- 044. (RESERVED)~~

~~045. LESSEE DESIGNATION OF OPERATOR OR AGENT.~~

~~01. Designation of Operator. In all cases where exploration, development, or production operations are not conducted by the lessee but are to be conducted under authority of an unapproved operating agreement or other arrangement, a designation of operator will be submitted to the department prior to commencement of such operations. Such a designation will be accepted as authority of the operator or his local representative to act for the lessee and to sign any papers or reports required under these rules. All changes of address and any termination of the authority of the operator will be immediately reported, in writing, to the department. (3-21-12)~~

~~02. Agent for Service. When required by the department, lessee will designate a local representative empowered to receive service of civil or criminal process, and notices and orders of the department issued pursuant to these rules. (3-21-12)~~

~~046.1. -- 049. (RESERVED)~~

**050. LAND SURFACE USE RIGHTS AND OBLIGATIONS.**

**01. Use and Occupancy.** (3-21-12)

**a.** Lessee will be entitled to use and occupy only so much of the surface of the leased lands as may be required for all purposes reasonably incident to exploration for, drilling for, production and marketing or geothermal resources and associated by-products produced from the leased lands, including the right to construct and maintain thereon all works, buildings, plants, waterway, roads, communication lines, pipelines, reservoirs, tanks, pumping stations or other structures necessary to the full enjoyment and development thereof, consistent with a plan of operations and amendments thereto, as approved by the Department. (3-21-12)

**b.** Uses occurring on the leased area related to exploration, development, production, or marketing of geothermal resources and associated by-products produced from off-lease lands may require the lessee to pay additional rent. (3-21-12)

**02. Supervision.** Uses of state lands within the jurisdiction and control of the Board are subject to the supervision of the Department. Other state lands are subject to the supervision of the appropriate state agency consistent with these rules. (3-21-12)

~~03. Entry by Department. The Department will be permitted at all reasonable times to go in and upon the leased lands and premises, during the term of a lease, to inspect the operations and the products obtained from the leased premises and to post any notice that the Department may deem fit and proper. (3-21-12)~~

~~04. Public Access. During operations, the lessee will regulate public access and vehicular traffic to protect human life, wildlife, livestock and property from hazards associated with the operations. For this purpose, the lessee will provide warning, fencing, flagmen, barricades, well and hole coverings and other safety measures as appropriate. Restrictions on access must be approved by the Department as part of a plan of operations under Section 055. (3-21-12)~~



~~05. Other Uses. Operations under other leases or uses on the same lands shall not unreasonably interfere with or endanger operations under leases issued under these rules nor shall operations under these rules unreasonably interfere with or endanger operations under any lease, license, claim, permit or other authorized use pursuant to the provisions of any other Idaho law. (9-3-91)~~

**063. Distance from Residence.** No well may be drilled within two hundred (200) feet of any house or barn on the premises, without the written consent of the Department and its surface lessees, grantees or contract purchasers. (3-21-12)

~~07. Fences. Lessee will not at any time fence any watering place upon leased lands where the same is the only accessible and feasible watering place upon the lands within a radius of one (1) mile without first having secured the written consent of the Department. (3-21-12)~~

~~08. Timber Removal. Lessee must not unreasonably interfere with the removal of timber purchased prior to or subsequent to the issuance of a lease. Lessee may remove any timber required for ingress or egress or necessary for operations. Any timber cut or removed by lessee must be paid for by lessee on a current stumpage price basis as determined by the Department. (3-21-12)~~

~~09. Grazing. A geothermal resources lease shall not be construed to prohibit the leasing of the leased lands by the Board to other persons for grazing and agricultural purposes, or for the mining of minerals or for oil and gas development; provided, however, that the lessee under a geothermal resources lease shall have paramount right as against grazing and agricultural lessees to the use of so much of the surface of the land as shall be necessary for the purposes of the lease. All lessees shall have the right of ingress and egress at all times during the term of the lease. (9-3-91)~~

**#04. Disposal of Leased Land.** The Board reserves the right to sell or otherwise dispose of the surface of the lands embraced with a lease, insofar as said surface is not necessary for the use of the lessee in the exploration, development and production of the geothermal resources and associated by-products, but any sale of surface rights made subsequent to execution of a lease will be subject to all the terms and provisions of that lease during the life thereof. (3-21-12)

**#05. Damage.** Lessee shall pay to the Board, its surface lessees or grantees or contract purchasers, for any damage done to the surface of said lands and improvements thereon, including without limitation growing crops, by reason of lessee's operations. (9-3-91)

**051. -- 053. (RESERVED)**

**054. EXPLORATION UNDER THE LEASE.**

**01. Diligent Exploration.** Lessees must perform diligent exploration and development activities in the first five (5) years of the initial lease term or as otherwise extended by lease provision. Diligent exploration includes seismic, gravity, and other geophysical surveys, geothermometry studies, drilling temperature gradient wells, or similar activities that seek to determine the presence or extent of geothermal resources. This exploration may occur off-lease if it is being done on the same geothermal field. Failure to perform diligent exploration as described may result in lease cancellation. ~~(3-21-12)( )~~

**02. Casual Exploration.** At any time after formal approval by the Board of a lease application, lessee may enter upon the leased lands for casual exploration or inspection without notice to the department. As an express condition of an application to lease and of the right of casual inspection without notice, lessee agrees to the indemnity conditions provided in Section 102 of these rules without a formally executed lease. (3-21-12)

**03. Plan Required.** Lessee must submit a Research and Analysis plan ~~of operations~~ to the Department before any exploration using motorized equipment or before otherwise engaging in operations which may lead to an appreciable disturbance or damage to lands, timber, other resources, or improvements on or adjacent to the leased lands. The proposed activities may not start until the Department approves the plan and the applicable preconditions in Sections 100 and 101 of these rules have been satisfied. The plan of operations may be amended as needed with department approval. The plan ~~must~~ shall include all items which the Department deems necessary or useful in

managing the geothermal resources, including, but not limited to, the following: (3-21-12)( )

- ~~a.~~ *Well drilling information such as the proposed location of each well including a layout showing the position of the mud tanks, reserve pits, etc.;* (3-21-12)
- ~~b.~~ *Existing and planned access, access controls, and lateral roads;* (3-21-12)
- ~~c.~~ *Location and source of water supply (if needed) and road building material;* (3-21-12)
- ~~d.~~ *Location of camp sites, air strips, buildings, pipelines, and other supporting facilities;* (3-21-12)
- ~~e.~~ *Other areas of potential surface disturbance;* (3-21-12)
- ~~f.~~ *The topographic features of the land and the drainage patterns;* (3-21-12)
- ~~g.~~ *Methods for disposing of waste material;* (3-21-12)
- ~~h.~~ *a.* A narrative statement describing the proposed measures to be taken for protection of the environment, including, but not limited to the prevention or control of: (3-21-12)
  - i. Fires; (3-21-12)
  - ii. Soil loss and erosion; (3-21-12)
  - iii. Pollution of surface and ground waters; (3-21-12)
  - iv. Damage to fish and wildlife or other natural resources; (3-21-12)
  - v. Air and noise pollution; and (3-21-12)
  - vi. Hazards to public health and safety during lease activities. (3-21-12)
- ~~h.~~ *b.* All pertinent information or data which the department may require to support the plan of operations for the utilization of geothermal resources and the protection of the environment; (3-21-12)
- ~~j.~~ *An estimate of reasonable reclamation costs for reclamation performed by an outside party. This estimate will form the basis for the bond required in Section 100 of these rules; and* (3-21-12)
- ~~k.~~ *A map or maps of sufficient scale to depict the information required in Paragraphs a. through j. of this Subsection.* (3-21-12)

**055. DEVELOPMENT AND PRODUCTION UNDER THE LEASE.**

**01. Diligent Development of Lease and Production.** Lessee must develop the geothermal resources on their lease area and start production within the first ten (10) years of the initial lease term and start production or as otherwise extended by lease provision. Development of the lease area requires wells to be drilled and other necessary infrastructure to be built. Production on the lease area means that geothermal fluids are being used and royalties are being paid to the state. Failure to develop the lease and start production as described may result in lease cancellation unless the lessee applies to the Department for an extension and the extension is granted. (3-21-12)( )

**02. Best Practices.** All operations will conform to the best practice and engineering principles in use in the industry. Operations must be conducted in such a manner as to protect the natural resources on the leased lands, including without limitation geothermal resources, and to result in the maximum ultimate recovery of geothermal resources with a minimum of waste, and be consistent with the principles of the use of the land for other purposes and of the protection of the environment. Lessee must promptly remove from the leased lands or store, in an orderly manner, all scraps or other materials not in use and not reasonably incident to the operation. (3-21-12)

~~03. **Reclamation.** Lessee must reclaim all leased lands disturbed by exploration, development, operation and marketing of geothermal resources in accordance with applicable reclamation procedures contained in Sections 47-1509 and 47-1510, Idaho Code, as now existing and hereafter amended. Lessee must conserve, stockpile, and protect topsoil to enhance reclamation. Lessee must take all necessary steps in the exploration, development, operation, and marketing of geothermal resources to avoid a threat to life or property or an unreasonable risk to subsurface, surface, or atmospheric resources.~~ **Plans Required.** Prior to development, Lessee shall submit a Development Plan, Operating Plan, and Decommissioning and Reclamation Plan for the leased lands. All plans shall be approved by the Department, in writing, prior to Lessee beginning a phase of the lease in which those plans are performed or as otherwise required by the lease. All required plans shall include all items which the Department deems necessary or useful in managing the geothermal resources, including, but not limited to, those items referred to in Paragraphs 054.03.a. and 054.03.b. of this rule. (3-21-12)(\_\_\_\_)

**04. Waste and Damage.** (3-21-12)

**a.** Lessee must take all reasonable precautions to prevent the following: (3-21-12)

**i.** Waste; (3-21-12)

**ii.** Damage to other natural resources; (3-21-12)

**iii.** Injury or damage to persons, real or personal property; and (3-21-12)

**iv.** Any environmental pollution or damages that may constitute a violation of state or federal laws. (3-21-12)

**b.** The Department may inspect lessee's operations and issue such orders as are necessary to accomplish the purposes in Paragraph 055.04.a. Any significant effect on the environment created by the lessee's operations or failure to comply with environmental standards must be reported to the Department by lessee within twenty-four (24) hours and confirmed in writing within thirty (30) days. (3-21-12)

**05. Notice of Production.** Lessee must notify the department within sixty (60) days before any geothermal resources are used or removed for commercial purposes. (3-21-12)

~~06. **Shut Downs.** The Department is authorized to shut down any operations which it determines are causing, or may imminently cause, pollution of the natural environment or waste of geothermal resources upon failure by lessee to take timely, corrective measures.~~ (3-21-12)

~~07. **Amendments.** The plan of operations must be amended by the lessee for the Department's approval to reflect changes in operations on the leased lands, including the installation of works, buildings, plants or structures for the production, marketing or utilization of geothermal resources.~~ (3-21-12)

~~08. **Sampling.** When necessary or advisable, the Department will require that adequate samples be taken and tests or surveys be made using techniques consistent with industry practice, without cost to the state of Idaho, to determine the identity and character of formations; the presence of geothermal resources, water or reservoir energy; the quantity and quality of geothermal, water or reservoir energy; the amount and direction of deviation of any well from the vertical; formation, casing and tubing pressures, temperatures, rate of heat and fluid flow, and whether operations are conducted in a manner looking to the protection of the interest of the state of Idaho. Lessee will forward a copy of the results obtained from all geochemical, hydrologic, geologic, and other tests or surveys to the department within thirty (30) days of receiving the results.~~ (3-21-12)

**056. WASTE PREVENTION, DRILLING AND PRODUCTION OBLIGATIONS.**

**01. Waste.** All leases shall be subject to the condition that the lessee will, in conducting his exploration, development and producing operations, use all reasonable precautions to prevent waste of geothermal resources and other natural resources found or developed in the leased lands. (9-3-91)

**02. Diligence.** The lessee must, subject to the right to surrender the lease, diligently drill and produce, or unitize such wells as are necessary to protect the Board from loss by reason of production on other properties. (3-21-12)

**03. Prevention of Waste Through Reinjection.** Geothermal lessees must return geothermal waters to the geothermal aquifer in a manner that supports geothermal development. (3-21-12)

~~**04. By Products.** Subject to lessee's right to surrender the lease, where the Department determines that production, use or conversion of geothermal resources under a geothermal lease is capable of producing a valuable by-product or by-products, including commercially demineralized or mineralized water contained in or derived from such geothermal resources for beneficial use in accordance with applicable state water laws, the Department may require substantial beneficial production or use thereof, except where the Department, in consultation with the lessee, determines that:~~ (3-21-12)

~~**a.** Beneficial production or use of by-products is not in the interest of conservation of natural resources; or~~ (3-21-12)

~~**b.** Beneficial production or use of by-products would not be economically feasible for the lessee; or~~ (3-21-12)

~~**c.** Beneficial production or use of by-products should not be required for other satisfactory reasons.~~ (3-21-12)

**054. Additional Requirements.** The selection of the types and weights of drilling fluids and provisions for controlling fluid temperatures, blowout preventers and other surface control equipment and materials, casing and cementing programs, etc., to be used must be based on sound engineering principles and must take into account apparent geothermal gradients, depths and pressures of the various formations to be penetrated and other pertinent geologic and engineering data and information about the area. In addition, the lessee must do the following: (3-21-12)

**a.** Take all necessary precautions to keep all wells under control at all times; (3-21-12)

**b.** Utilize trained and competent personnel; (3-21-12)

**c.** Utilize properly maintained equipment and materials; and (3-21-12)

**d.** Use operating practices which insure the safety of life and property. (3-21-12)

**065. Unused Wells.** Except as provided in Subsection 070.02 of these rules, the lessee must promptly plug and abandon any well on the leased land that is not used or useful in conformity with regulations promulgated by the IDWR or its successor agency. No production well will be abandoned until its lack of capacity for further profitable production of geothermal resources has been demonstrated to the satisfaction of the Department and the Department has been given an opportunity to either acquire the well permit or assign it to another party. A producible well may be abandoned only after receipt of written approval by the Department. Equipment will be removed, and premises at the well site will be restored as near as reasonably possible to its original condition immediately after plugging operations are completed on any well except as otherwise authorized by the Department. Drilling equipment must not be removed from any suspended drilling well without taking adequate measures to close the well and protect subsurface resources. Upon failure of lessee to comply with any requirements under this rule, the Department is authorized to cause the work to be performed at the expense of the lessee and the surety. (3-21-12)

**057. -- 059. (RESERVED)**

**060. EXPLORATION AND OPERATION RECORDS, CONFIDENTIALITY.**

**01. Drilling Records.** Lessee must keep or cause to be kept and to be filed with the IDWR such careful and accurate well drilling records as are now or may hereafter be required by that Department. Lessee must file with the Department, such production records and exploration evidence as required by Sections 030, 036, and 055 of these

rules, which records will be subject to inspection by the public at the offices of the Department during regular business hours under such conditions as the Department deems appropriate, subject, however, to exemptions from disclosure as set forth in Section 9-340, Idaho Code. As an express condition of the lease, the Department may inspect and copy well drilling records filed with the IDWR at any time after the records are filed. (3-21-12)

**02. Continuing Obligations.** ~~Unless lessee is specifically released in writing by the Department of all or any portion of its obligations under the lease upon the assignment, surrender, termination or expiration of the lease.~~ Lessee's obligations under this rule will continue beyond assignment, surrender, termination or expiration of the lease. Lessee must, within thirty (30) days after assignment, surrender, termination or expiration or such additional time as the Department may grant, file all outstanding data and records required by this rule with the Department. (3-21-12)( )

**03. Well Logs.** The confidentiality of well logs is limited to one year from well completion as stated in Section 42-4010(b), Idaho Code. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**070. WATER RIGHTS.**

**01. Water Rights.** ~~Lessee must comply with all laws of the state of Idaho, including the rules and regulations of the IDWR, regulating the appropriation of the public waters of Idaho to beneficial uses.~~ Lessee shall comply with all applicable federal and state laws, rules and regulations regarding the appropriation of public waters of Idaho to beneficial uses. No water right developed or obtained by lessee in conjunction with operations under this lease will be sold, assigned or otherwise transferred without written approval of the Department. Upon surrender, termination or expiration of the lease, lessee must take all actions required by the Department to assign to the Board all water rights, including applications, permits and licenses. Lessee will enjoy the right of use of any private waters upon the leased lands during the term of the lease, but not thereafter. (3-21-12)( )

**02. Potable Water Discovery.** All leases issued under these rules will be subject to the condition that, where the lessee finds only potable water of no commercial value as a geothermal resource in any well drilled for exploration or production of geothermal resources, and when the water is of such quality and quantity as to be valuable and usable for agricultural, domestic, or other purpose, the Board, or where appropriate, the surface lessee, grantee or contract purchaser, will have the right to acquire the well with whatever casing is installed in the well at the fair market value of the casing, and upon the assumption of all future liabilities and responsibilities for the well, with the approval of the director of the IDWR. (3-21-12)

**071. -- 074. (RESERVED)**

**075. ASSIGNMENTS.**

**01. Prior Written Approval.** ~~A total or partial assignment of a lease must be approved in writing by the department. Approval will not be unreasonably withheld and will only be effective after written approval is given. An assignee must accept, and the assignor must release, all responsibility for improvements, operations, and obligations under the lease before the department approves the assignment. An assignment will take effect immediately upon approval of the assignment.~~ In order for lessee to effect an assignment, lessee shall, prior to the consummation of an effective sale, transfer or assignment of the lease between lessee and its proposed assignee, provide to the Department certain information about the proposed assignment, including identification of the proposed assignee and general terms of the proposed assignment on assignment application forms provided by the Department. Any proposed total or partial assignment of a lease must be preapproved in writing by the Department prior to any proposed sale, transfer or assignment of the lease is consummated between lessee and the proposed assignee. Approval will not be unreasonably withheld. Following the Department's written preapproval of the proposed assignee and general terms of the proposed assignment, lessee and assignee may consummate any such sale, transfer or assignment of lessee's leasehold interest in the lease. The consummation of any assignment agreement by the lessee without the Department's prior written preapproval shall constitute a default of the lease, and such sale,

~~transfer or assignment may be rejected in the Department's sole discretion; and, such assignment will only be effective if the default is expressly waived in writing by the Department. In order for an assignment of lessee's interest in the lease to be acceptable for approval by the Department, the consummated sale, transfer or assignment must include provisions wherein lessee has sold, transferred or assigned to the assignee any and all interest that lessee has in the lease together with any and all interest lessee has in any and all improvements located upon the leased premises, and assignee must assume all liabilities of lessee under the lease together with ownership of all improvements owned by lessee. An assignment between lessee and its assignee will only take effect following the Department's final written approval of the assignment following receipt of copies of the final, consummated sale, transfer or assignment agreement between lessee and assignee.~~ (3-21-12)( )

**02. Full or Partial.** A lease may be assigned as to all or part of the acreage included therein to any person qualified to hold a state lease, provided that neither the assigned nor the retained part created by the assignment shall contain less than forty (40) acres. No undivided interest in a lease of less than ten percent (10%) shall be created by assignment. (9-3-91)

**03. Overriding Royalty Disclosure.** Overriding royalty interests created by an assignment are subject to the requirements in Section 080 of these rules. (3-21-12)

**04. Responsibility.** In an assignment of ~~the~~ a partial or complete interest in all of the lands in a lease the assignor and ~~his~~ its surety shall continue to be responsible for performance of any and all obligations under the lease until ~~the effective date of the assignment~~ such time as the Department shall, in writing, release lessee and its surety from obligations arising under the lease after the Department accepts any such assignment and provides a release of any or all obligations in writing. After the effective date of any assignment, the assignee and ~~his~~ its surety shall be bound by the terms of the lease to the same extent as if the assignee were the original lessee, any conditions in the assignment to the contrary notwithstanding. (9-3-91)( )

**05. Segregation of Assignment.** An assignment of ~~the~~ all or any portion of lessee's record title of the complete interest in a portion of the lands in a lease shall clearly identify and segregate the assigned and retained portions. After the effective date, the assignor ~~is~~ will be released and discharged from any obligations thereafter accruing with respect to the assigned portion of the leased lands. Such segregated leases shall continue in full force and effect for the primary term of the original lease or as further extended pursuant to the terms of these rules. (9-3-91)( )

**06. Joint Principal.** Where an assignment does not segregate the record title to the lease, the assignee, if the assignment so provides, may become a joint principal on the bond with the assignor. The application must also be accompanied by a consent of assignor's surety to remain bound under the bond of record, if the bond, by its terms, does not contain such consent. If a party to the assignment has previously furnished a statewide bond, no additional showing by such party is necessary as to the bond requirement. (9-3-91)

~~07. Form of Assignment. An assignment must be a good and sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the serial number of the lease, the land involved, the name and address of the assignee, the interest transferred and the consideration. A fully executed copy of the instrument of assignment must be filed with the application for approval. An assignment must effect or concern only one (1) lease or a portion thereof, except for good cause shown.~~ (9-3-91)

**087. Application.** The application for approval of an assignment must be on forms provided approved by the Department ~~or exact copies thereof. It must be accompanied by a signed statement by the assignee either (1) that he is the sole party in interest in the assignment, or (2) setting forth the names and qualifications of the other parties taking an interest in the lease. Where the assignee is not the sole party in interest, separate statements must be signed by each of the other parties and by the assignee setting forth the nature and extent of the interest of each party and the nature of the agreement between them. In addition, it shall be declared which party in interest will be the party of record for purpose of receiving all communications and other notices from the lessor. If payments out of production are reserved, a statement must be submitted stating the details as to the amount, method of payment, and other pertinent items. These separate statements must be filed in the office of the department in Boise, not later than fifteen (15) days after the filing of the application for approval.~~ (9-3-91)( )

~~098. Denial. Unless the lease account is in good standing at the time the assignment is reached for~~

~~action, the request for approval of the assignment will be denied, and the lease shall be subject to termination in accordance with these rules.~~ If the lessee is in default of the lease at the time of a request for assignment approval, the Department may, at its sole discretion, reject any proposed assignment until the lease is brought into full compliance. The approval of an assignment of lease in good standing shall not be unreasonably withheld provided such consent of the Department is requested and obtained prior to any assignment. (9-3-91)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**085. UNIT OR COOPERATIVE PLANS OF DEVELOPMENT OR OPERATION.**

**01. IDWR Approval.** Nothing in this rule will excuse the parties to a unit agreement from procuring the approval of the IDWR pursuant to Section 42-4013, Idaho Code, if approval is required. (3-21-12)

**02. Unit Plan.** For the purpose of conserving the natural resources of any geothermal pool, field or like area, lessees under lease issued by the Board are authorized, with the written consent of the Department, to commit the state lands to unit, cooperative or other plans of development or operation with other state lands, federal lands, privately-owned lands or Indian lands. Departmental consent will not be unreasonably withheld. Applications to unitize, or a copy of the application filed with IDWR, will be filed with the Department who will certify whether such plan is necessary or advisable in the public interest. The Department may require whatever documents or data ~~he or she~~ which the Department deems necessary in its reasonable discretion. To implement such unitization, the Board may with the consent of its lessees modify and change any and all terms of leases issued by it which are committed to such unit, cooperative or other plans of development or operations. (3-21-12)( )

**03. Contents.** The agreement must describe the separate tracts comprising the unit, disclose the apportionment of the production of royalties and costs to the several parties, and the name of the operator, and must contain adequate provisions for the protection of the interests of all parties, including the state of Idaho. The agreement should be signed by or in behalf of all interested necessary parties before being submitted to the Department. It will be effective only after approval by the Department. The unit operator must be a person as defined by these rules and ~~he~~ must be approved by the Department. (3-21-12)( )

**04. Lease Modification.** Any modification of an approved agreement will require approval of the Department under procedures similar to those cited in Subsection 085.02 of these rules. (3-21-12)

**05. Term.** At the sole discretion of the Department, ~~The~~ term of ~~all~~ any leases included in any cooperative or unit plan of development or operation ~~will~~ may be extended ~~automatically~~ for the term of such unit or cooperative agreement, but in no event beyond that time provided in Subsection 030.01 of these rules. Rentals or royalties on leases so extended ~~will be at the rate specified in the lease~~ may be reassessed for such extended term of the lease. (3-21-12)( )

**06. Continuation of Lease.** Any lease which will be eliminated from any such cooperative or unit plan of development or operation, or any lease which will be in effect at the termination of any such cooperative or unit plan of development or operation, unless relinquished, will continue in effect for the term of the lease. (3-21-12)

**07. Evidence of Agreement.** Before issuance of a lease for lands within an approved unit agreement, the lease applicant or successful bidder will be required to file evidence that ~~he has~~ they have entered into an agreement with the unit operator for the development and operation of the lands in a lease if issued to him under and pursuant to the terms and provisions of the approved unit agreement, or a statement giving satisfactory reasons for the failure to enter into such agreement. If such statement is acceptable, ~~he~~ the lease applicant or successful bidder will be permitted to operate independently, but will be required to perform his operations in a manner which the Department deems to be consistent with the unit operations. (3-21-12)( )

**08. Department of Water Resources.** Nothing in this rule shall excuse the parties to a unit agreement from procuring the approval of the department of water resources pursuant to Section 42-4013, Idaho Code, if approval is required. (9-3-91)

(BREAK IN CONTINUITY OF SECTIONS)

095. SURRENDER, TERMINATION, EXPIRATION OF LEASE.

**01. Procedure.** A lease, or any surveyed subdivision of the area covered by such lease, may be surrendered by the record title holder by filing a written relinquishment in the office of the Department ~~in Boise~~, on a form furnished by the Department, provided that a partial relinquishment does not reduce the remaining acreage in the lease to less than forty (40) acres. The minimum acreage provision of this section may be waived by the Department where ~~the Department~~ finds such exception is justified on the basis of exploratory and development data derived from activity on the leasehold. The relinquishment must: (3-21-12)( )

- a. Describe the lands to be relinquished; (9-3-91)
- b. Include a statement as to whether the relinquished lands had been disturbed and, if so, whether they were restored as prescribed by the terms of the lease; (9-3-91)
- c. State whether wells had been drilled on the lands and, if so, whether they have been plugged and abandoned pursuant to the rules of the IDWR; and (3-21-12)
- d. Furnish a sworn statement that all monies due and payable to workers employed by the record title holder of the interest on the leased premises have been paid. (9-3-91)

**02. Continuing Obligations.** A relinquishment shall take effect on the date it is filed, subject to the continued obligation of the lessee and his surety: (9-3-91)

- a. To make payments of all accrued rentals and royalties; (9-3-91)
- b. To place all wells on the land to be relinquished in condition for suspension of operations or abandonment; (9-3-91)
- c. To restore the surface resources in accordance with these rules and the terms of the lease; and (9-3-91)
- d. To comply with all other environmental stipulations provided for by these rules or lease. (9-3-91)

**03. Failure to Pay Rental or Royalty.** The Director may terminate a lease for failure to pay rentals or royalties thirty (30) days after mailing a notice of delinquent payment. However, if the time for payment falls upon any day in which the office of the Department ~~in Boise~~ is not open, payment received on the next official working day will be deemed to be timely. The termination of the lease for failure to pay the rental will be noted on the official records of the Department. Upon termination the lands included in such lease may become subject to leasing as provided by these rules. (3-21-12)( )

**04. Termination for Cause.** A lease may be terminated by the Department for any violation of these rules, or the lease terms, sixty (60) days after notice of the violation has been given to lessee by personal service or certified mail, return receipt requested, to the address of record last appearing in the files of the Department, unless: (3-21-12)

- a. The violation has been corrected; or (9-3-91)
- b. The violation is one that cannot be corrected within the notice period and the lessee has in good faith commenced within the notice period to correct the violation and thereafter proceeds diligently to complete the correction. (9-3-91)

**05. Equipment Removal.** ~~Upon~~ Prior to the expiration of the lease, or the earlier termination or



surrender thereof pursuant to this rule, and provided the lessee is not in default, the lessee will have the privilege at any time ~~within a period of ninety (90) days thereafter of~~ during the term of the lease to remove from the leased premises any materials, tools, appliances, machinery, structures, and equipment other than improvements needed for producing wells. Any materials, tools, appliances, machinery, structures and equipment subject to removal, but not removed ~~within the ninety (90) day period~~, prior to any termination of the lease or any extension thereof that may be granted because of adverse climatic conditions during that period, will, at the option of the Department, become property of the state of Idaho, but the lessee must remove any or all such property where so directed by the Department. (3-21-12)( )

**06. Surrender After Termination.** Upon the expiration or termination of a lease, the lessee will quietly and peaceably surrender possession of the premises to the state, and if the lessee is surrendering the leased premises or any portion thereof, the lessee shall deliver to the state a good and sufficient release on a form furnished by the Department. (3-21-12)( )

**096. -- 099. (RESERVED)**

**100. BOND REQUIREMENTS.**

**01. Minimum Bond.** Prior to initiation of operations using motorized earth-moving equipment lessee must furnish a bond. This bond will be in favor of the state of Idaho, conditioned on the payment of all damages to the land surface and all improvements thereon, including without limitation crops on the lands, whether or not the lands under this lease have been sold or leased by the Board for any other purpose; conditioned also upon compliance by lessee of his obligations under this lease and these rules. The Department may require a new bond in a greater amount at any time after operations have begun, upon a finding that such action is reasonably necessary to protect state resources. (3-21-12)

**02. Statewide Bond.** In lieu of the aforementioned bonds, lessee may furnish a good and sufficient "statewide" bond conditioned as in Subsection 100.01. This bond will cover all lessee's leases and operations carried on under all geothermal resource leases issued and outstanding to lessee by the Board at any given time during the period when the "statewide" bond is in effect. The amount of such bond will be equal to the total of the requirements of the separate bonds being combined into a single bond. (3-21-12)

**03. Period of Liability.** The period of liability of any bond will not be terminated until all lease terms and conditions have been fulfilled and the bond is released in writing by the Department. (3-21-12)

**04. Operator Bond.** ~~Where a bond is furnished by an operator, suit may be brought thereon without joining the lessee if he is not a party to the bond.~~ If the event suit is filed to enforce the terms of any bond furnished by an operator in which the lessee (if a different person) is not a named party, the Department may, in its sole discretion, join the lessee as a party to such suit. (9-3-91)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

~~**102. INDEMNITY.**~~

~~Lessee will expressly agree to indemnify, defend and save harmless the state of Idaho, state Board of land commissioners, the Department of the department of lands, the department of lands, and the owner of the surface rights and improvements, if not the state of Idaho, or state lessee of surface rights, if there be one, the officers, agents and employees of each and every of the foregoing, from and against any and all claims, liability, costs, damages, or expenses including any claims, by the federal government or other damages to the environment or for loss, injury, or damage to persons or property including claims of the employees of the lessee or lessee's agent, operator or contractor which may arise out of the activities conducted on the leased premises by the lessee, its agent, operator, contractor, or employees.~~ (3-21-12)

~~**103.**~~ -- **104. (RESERVED)**

(BREAK IN CONTINUITY OF SECTIONS)

106. -- ~~109~~<sup>10</sup>. (RESERVED)

~~110. IMPOSSIBILITY OF PERFORMANCE.~~

~~Whenever, as a result of any cause beyond lessee's control, including without limitation, fire, flood, windstorms, or other act of God, law, order or regulation of any governmental agency, or inability to secure men, material or transportation, it becomes impossible for lessee to perform or to comply with any obligation under a lease other than payment of rentals, the Department may by written order excuse lessee from damages or forfeiture of the lease and lessee's obligations will be suspended so long as the Department finds that good cause exists; provided, however, that nothing herein will extend the term of the lease.~~ (3-21-12)

## 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- 1201

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-1806(2), 54-1806(4), (11), 54-1806A, 54-1812, 54-1813, 54-1814 and 54-1841, Idaho Code.

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

<b>Tuesday - October 23, 2012 - 1:00 to 2:00 p.m.</b>
<b>Idaho State Board of Medicine Conference Room 1755 Westgate Drive, Suite 140, Boise, ID</b>

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

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

The substance and purpose of this rule change is to update the Board's web address, clarify the section relating to Physician Panelist for Prelitigation Consideration of Medical Malpractice Claims and comply with the recommendations of the FBI and local law enforcement pursuant to a review of the Board's fingerprint reporting security procedures.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: There will be no increase in fees.

Authority for imposition of fees is found in Sections 54-1806 and 54-1806A (4), Idaho Code.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted. The Board received input and comments from its constituents and licensees.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Nancy M. Kerr, Executive Director, Idaho State Board of Medicine, (208) 327-7000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 21st of August, 2012.

Nancy M. Kerr, Executive Director  
Idaho State Board of Medicine  
1755 Westgate Drive, Ste. 140  
PO Box 83720, Boise, ID 83720-0058  
Phone: (208) 327-7000 / Fax: (208) 327-7005

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 22-0101-1201**

**006. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.**

The central office of the Board of Medicine will be in Boise, Idaho. The Board's mailing address, unless otherwise indicated, will be Idaho State Board of Medicine, P.O. Box 83720, Boise, Idaho 83720-0058. The Board's street address is 1755 Westgate Drive, Suite 140, Boise, Idaho 83704. The telephone number of the Board is (208) 327-7000. The Board's facsimile (FAX) number is (208) 327-7005. The Board's web site is [www.bom.state.id.us](http://www.bom.state.id.us). The Board's office hours for filing documents are 8 a.m. to 5 p.m. MST. ~~(3-30-06)~~( )

**007. FILING OF DOCUMENTS - NUMBER OF COPIES.**

All original documents and one (1) electronic copy in rulemaking or contested case proceedings must be filed with the office of the Board. ~~(3-29-10)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**050. GENERAL QUALIFICATIONS FOR LICENSURE AND RENEWAL.**

**01. Residence.** No period of residence in Idaho shall be required of any applicant, however, each applicant for licensure must be legally able to work and live in the United States. Original documentation of lawful presence in the United States must be provided upon request only. The Board shall refuse licensure or renew a license if the applicant is not lawfully present in the United States. (3-26-08)

**02. Character.** The Board may refuse licensure if it finds that the applicant has engaged in conduct prohibited by Section 54-1814, Idaho Code; provided the Board shall take into consideration the rehabilitation of the applicant and other mitigating circumstances. (7-1-93)

**03. English Language.** Each applicant shall speak, write, read, understand and be understood in the English language. Evidence of proficiency in the English language must be provided upon request only. (3-26-08)

**04. Application.** Each applicant must have graduated from an acceptable school of medicine, passed an examination acceptable to the Board that demonstrates qualification for licensure or successfully completed the United States Medical Licensing Exam (USMLE) and completed one (1) year of postgraduate training approved by the ACGME, AOA or Royal College of Physicians and Surgeons of Canada, and shall submit a completed written application to the Board on forms prescribed by the Board with the nonrefundable application fee. Any certificate or document required to be submitted to the Board which is not in the English language must be accompanied by a certified translation thereof into English. The application form shall be verified and shall require the following: (5-8-09)

**a.** Personal identification information and education background of the applicant including, but limited to, his college education, medical school education and postgraduate training; (3-26-08)

**b.** An original certificate or document of graduation from an acceptable school of medicine, and evidence of satisfactory completion of postgraduate training of one (1) year at one (1) training program accredited for

internship, residency or fellowship training by the ACGME, AOA or Royal College of Physicians and Surgeons of Canada; (3-26-08)

**c.** The disclosure of any criminal charges, convictions or guilty pleas against the applicant other than minor traffic offenses; (7-1-93)

**d.** The current mental and physical condition of the applicant, together with disclosure of any previous physical or mental illness which impacts the applicant's ability to practice medicine; (3-30-01)

**e.** The disclosure of any past or pending medical malpractice actions against the applicant, and the judgments or settlements, if any, of such claims exceeding fifty thousand dollars (\$50,000); (5-8-09)

**f.** The disclosure of any disciplinary action by any board of medicine, licensing authority, medical society, professional society, hospital, medical school, or institution staff in any state or country; (3-26-08)

**g.** The disclosure of the refusal to issue or renew a license to practice medicine by any state, Canadian or international licensing authority; (3-26-08)

**h.** References to include two (2) letters of recommendation signed by licensed physicians who have known the applicant professionally for at least one (1) year; (3-30-06)

**i.** An unmounted photograph of the applicant, of adequate size and clarity to identify the applicant and no larger than four inches tall by three inches wide (4" x 3"), taken not more than one (1) year prior to the date of the application; (3-30-06)

**j.** A certified copy of a full set of the applicant's fingerprints on forms supplied by the Board which shall be forwarded to the Idaho Department of Law Enforcement and to the FBI Identification Division for the purpose of a fingerprint-based criminal history check of the Idaho central criminal database and the Federal Bureau of Investigation criminal history database; (5-3-03)

**k.** The employment history and relevant practice locations of the applicant; (3-30-06)

**l.** Each state, country and jurisdiction in which the applicant has applied for a license to practice medicine; (3-26-08)

**m.** Each state, country and jurisdiction wherein the applicant is licensed to practice medicine; ~~and~~ (3-26-08)( )

**n.** ~~Such other information or examinations as the Board deems necessary to identify and evaluate the applicant's credentials and competency.~~ A copy of the applicant's birth certificate or current passport; and (3-30-06)( )

**o.** Such other information or examinations as the Board deems necessary to identify and evaluate the applicant's credentials and competency. ( )

**05. Examination.** Each applicant must pass an examination acceptable to the Board, within the time period recommended by the examination authority, which shall thoroughly test the applicant's fitness to practice medicine or successfully completed the United States Medical Licensing Exam (USMLE). If an applicant fails to pass the examination on two (2) separate occasions the applicant may be required to be interviewed, evaluated or examined by the Board. (5-8-09)

**06. Interview.** Each applicant may be personally interviewed by the Board or a designated committee of the Board. The interview shall include a review of the applicant's qualifications and professional credentials. (3-30-01)

**07. Applicants.** All applicants must complete their license application within one (1) year unless extended by the Board after filing an application for extension. Unless extended, applications that remain on file for

more than one (1) year will be considered null and void and a new application and new fees will be required as if filing for the first time. (3-30-06)

**08. Health Care Standards.** In reviewing the application or conducting the applicant's interview, the Board shall determine whether the applicant possesses the requisite qualifications to provide the same standard of health care as provided by licensed physicians in this state. If the Board is unable to reach such a conclusion through the application and interview, it shall conduct further inquiry, to establish such qualifications. (3-30-06)

**a.** Upon inquiry, if further examination is required, the Board may require passage of the Special Purpose Examination (SPEX) administered by the FSMB, a post licensure assessment conducted by the FSMB, or an evaluation by an independent agency accepted by the Board to evaluate physician competence. (5-8-09)

**b.** The Board will require further inquiry when in its judgment the need is apparent, including but not limited to the following circumstances: (3-30-06)

**i.** Graduate of an international medical school located outside the United States and Canada and not accredited by the LCME; (5-8-09)

**ii.** Applicant whose background investigation reveals evidence of impairment, competency deficit, or disciplinary action by any licensing or regulatory agency; (3-26-08)

**iii.** An applicant has not been in active medical practice for a period exceeding one (1) year, or when practice has been significantly interrupted; (3-30-06)

**iv.** An applicant has not written a recognized examination intended to determine ability to practice medicine within a period of five (5) years preceding application; (3-30-06)

**v.** An applicant whose initial licensure was issued on the basis of an examination not recognized by the Board; or (3-30-06)

**vi.** When there is any reason whatsoever to question the identity of the applicant. (3-30-06)

**c.** Recommendations of the assessment and or evaluation acceptable to the Board related to the ability of the applicant to practice medicine and surgery will be considered by the Board in its decision whether to issue a license and the Board may limit, condition, or restrict a license based on the Board's determination and the recommendation of the assessment or evaluation. (3-30-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**081. PHYSICIAN PANELIST FOR PRELITIGATION CONSIDERATION OF MEDICAL MALPRACTICE CLAIMS.**

**01. Purpose.** The purpose of serving as a physician panelist for prelitigation consideration of medical malpractice claims against physicians and surgeons practicing in the state of Idaho or against licensed acute care general hospitals operating in the state of Idaho is to: ( )

**a.** ~~e~~Cooperate in the prelitigation consideration of personal injury and wrongful death claims for damages arising out of the provision of or alleged failure to provide hospital or medical care in Idaho; and ( )

**b.** ~~to~~ ~~A~~Accept and hear complaints of such negligence and damages, made by or on behalf of any patient who is an alleged victim of such negligence. (5-8-09)( )

**02. Eligibility.** A physician licensed to practice medicine and surgery or osteopathic medicine or surgery in Idaho shall be available to serve in any two (2) year period, or a longer period not to exceed five (5) years,

as determined by the panel chairman, as a physician panelist for prelitigation consideration of a medical malpractice claim. (5-8-09)

**03. Excusing Physicians from Serving.** A physician panelist so selected shall serve unless he had served on a prelitigation panel during any previous two (2) year period, or a longer period not to exceed five (5) years, as determined by the panel chairman or for good cause shown, is excused by the panel chairman. To show good cause for relief from serving, the selected physician panelist shall present an affidavit to the panel chairman which shall set out the facts showing that service would constitute an unreasonable burden or undue hardship. The panel chairman shall have the sole authority to excuse a selected physician from serving on a prelitigation panel. (5-8-09)

**04. Penalties for Noncompliance.** The Board may condition, limit, suspend, or refuse to renew the license of any physician whom the Board determines has failed to serve as a physician panelist for the prelitigation consideration of a medical malpractice claim. (5-8-09)

## **IDAPA 22 - BOARD OF MEDICINE**

### **22.01.02 - RULES OF THE BOARD OF MEDICINE FOR THE REGISTRATION OF EXTERNS, INTERNS, AND RESIDENTS**

#### **DOCKET NO. 22-0102-1201 (FEE RULE)**

#### **NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-1806 (2) and (11), 54-1806A, 54-1812, 54-1813 (2) and 54-1814, Idaho Code.

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

<b>Tuesday - October 23, 2012 - 1:00 to 2:00 p.m.</b>
<b>Idaho State Board of Medicine Conference Room 1755 Westgate Drive, Suite 140, Boise, ID</b>

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

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

The purpose of this proposed rulemaking includes updating and clarifying the registration process; enhancing definitions, delimiting duration of registration and improving the registration fee schedule to minimize costs for issuance and renewal of registrations.

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

Authority for imposition of fees is found in Sections 54-1806 and 54-1806A (4), Idaho Code.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted. The Board received input and comments from its constituents and licensees.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Nancy M. Kerr, Executive Director, Idaho State Board of Medicine, (208) 327-7000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 21st of August, 2012.

Nancy M. Kerr, Executive Director  
Idaho State Board of Medicine

PO Box 83720, Boise, ID 83720-0058



1755 Westgate Drive, Suite 140

Phone: (208) 327-7000 Fax: (208) 327-7005

**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 22-0102-1201**

**006. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.**

The central office of the Board of Medicine will be in Boise, Idaho. The Board's mailing address, unless otherwise indicated, will be Idaho State Board of Medicine, P.O. Box 83720, Boise, Idaho 83720-0058. The Board's street address is 1755 Westgate Drive, Suite 140, Boise, Idaho 83704. The telephone number of the Board is (208) 327-7000. The Board's facsimile (FAX) number is (208) 327-7005. The Board's web site is [www.bom.state.id.us](http://www.bom.state.id.us) [idaho.gov](http://idaho.gov). The Board's office hours for filing documents are 8 a.m. to 5 p.m. MST.

(3-26-08)( )

**007. FILING OF DOCUMENTS -- NUMBER OF COPIES.**

All documents in rulemaking or contested case proceedings must be filed with the office of the Board. The original and ~~ten~~ one (1) electronic ~~copies~~ of all documents must be filed with the office of the Board.

(3-26-08)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS.**

~~01. Acceptable Post Graduate Training Program. A post graduate medical training program or course of medical study which has been approved by the Accreditation Council for Graduate Medical Education (ACGME) or American Osteopathic Association.~~ **Acceptable School of Medicine.** A medical school or college of osteopathic medicine located within the United States accredited by the Liaison Committee on Medical Education (LCME), Joint Committee of the Association of American Medical Colleges (AAMC) and the American Medical Association (AMA) or the American Osteopathic Association (AOA).

(3-26-08)( )

~~02. Acceptable Training Program. A medical training program or course of medical study which has been approved by the Liaison Committee for Medical Education (LCME), Council on Medical Education or American Osteopathic Association.~~ **Acceptable International School of Medicine.** An international medical school located outside the United States or Canada which meets the standards for medical educational facilities set forth in Subsection 051.02, provides the scope and content of the education and coursework that are equivalent to acceptable schools of medicine located within the United States or Canada and satisfies the Educational Commission for Foreign Medical Graduates' (ECFMG) requirements to provide direct verification and certification status of its international medical graduates.

(3-26-08)( )

~~03. Acceptable Post Graduate Training Program. A post graduate medical training program or course of medical study which has been approved by the Accreditation Council for Graduate Medical Education (ACGME) or American Osteopathic Association.~~ **Acceptable Training Program.** A medical training program or course of medical study which has been approved by the Liaison Committee for Medical Education (LCME), Council on Medical Education or American Osteopathic Association (AOA).

(3-26-08)( )

**04. Acceptable Post Graduate Training Program.** A post graduate medical training program or course of medical study which has been approved by the Accreditation Council for Graduate Medical Education (ACGME) or American Osteopathic Association (AOA).

( )

~~045.~~ **Accreditation Council for Graduate Medical Education (ACGME).** A nationally recognized accrediting authority responsible for accreditation of post-Doctor of Medicine medical training programs within the United States or its successor.

(3-26-08)

~~056.~~ **Alternate Supervising Physician.** A physician currently licensed to practice medicine and surgery or licensed to practice osteopathic medicine and surgery in Idaho who has been designated by the supervising physician and approved by the Board who is responsible for the direction and supervision of the extern, intern, or

resident in the temporary absence of the supervising physician. (3-26-08)

~~067.~~ **Board.** The Idaho State Board of Medicine. (3-15-78)

~~078.~~ **Educational Commission for Foreign Medical Graduates (ECFMG).** A nationally recognized non-profit organization that certifies international medical graduates who seek to enter United States residency and fellowship programs and conducts the Clinical Skills Assessment (CSA) or its successor. (3-26-08)

~~089.~~ **Extern or Student.** A bona fide student enrolled in an acceptable school of medicine as defined in IDAPA 22.01.01, "Rules of the Board of Medicine for the Licensure to Practice Medicine and Surgery and Osteopathic Medicine and Surgery in Idaho," Subsection 010.01 or 010.02, who has not received his degree. ~~(3-26-08)~~( )

~~0910.~~ **Intern or Resident.** Any person who has completed a course of study at an acceptable school of medicine as defined in IDAPA 22.01.01, "Rules of the Board of Medicine for the Licensure to Practice Medicine and Surgery and Osteopathic Medicine and Surgery in Idaho," Subsection 010.01 or 010.02, but is not yet licensed to practice medicine and who is enrolled in an acceptable postgraduate medical training program. ~~(3-26-08)~~( )

~~101.~~ **Liaison Committee on Medical Education (LCME).** An internationally recognized accrediting authority, sponsored by the Association of American Medical Colleges and the American Medical Association, for medical education programs leading to a Doctor of Medicine degree in United States and Canadian medical schools or its successor. (3-26-08)

~~112.~~ **Original Certificate or Document.** An original document itself or a certified copy thereof issued by the agency or institution and mailed or delivered directly from the source to the Board or a Board approved credential verification service. (3-26-08)

~~123.~~ **Person.** A natural, living human individual. (3-26-08)

~~134.~~ **Supervising Physician.** A physician approved by the Board who holds a current active license to practice medicine and surgery or osteopathic medicine and surgery in Idaho, in good standing with no restrictions upon or actions taken against his license, who signs the application for registration of a extern, intern or resident, and who is responsible for the direction and supervision of their activities. (3-26-08)

**011. -- 015. (RESERVED)**

**016. REQUIREMENTS FOR REGISTRATION OF EXTERNS, INTERNS, AND RESIDENTS.**

**01. Residence.** No period of residence in Idaho shall be required of any applicant, however, each applicant for registration must be legally able to work and live in the United States. Original documentation of lawful presence in the United States must be provided upon request only. The Board shall refuse to issue a registration or renew a registration if the applicant is not lawfully present in the United States. (3-26-08)

**02. English Language.** Each applicant shall speak, write, read, understand and be understood in the English language. Evidence of proficiency in the English language must be provided upon request only. (3-26-08)

**03. Application.** Each extern, intern or resident intending to commence activities in the state of Idaho which may involve activities constituting the practice of medicine, must submit a completed registration application to the Board on forms furnished by the Board and be issued a registration certificate prior to the commencement of any such activities. Any diploma or other document required to be submitted to the Board which is not in the English language must be accompanied by a certified translation thereof into English. The application form shall be verified and shall require the following information: (3-26-08)

**a.** Personal identification information and the educational background of the extern, intern or resident including his college education, medical school education and any postgraduate training programs; (3-26-08)

**b.** The disclosure of any criminal convictions, criminal charges, medical disciplinary actions or

medical malpractice actions, whatever the outcome, involving the extern, intern, or resident; ~~(3-15-78)~~( )

c. A complete description of the program or course of study in the acceptable training program or acceptable post graduate training program the applicant intends to follow, including documentation of the liability coverage to be provided to the applicant; (3-26-08)

d. The name and address of the supervising physician and alternate supervising physician and the location of the program or course of study; (3-15-78)

e. The signature by the supervising physician and alternate supervising physician by which they acknowledge and accept responsibility for the activities of the extern, intern, or resident; (3-15-78)

f. An original certificate or document confirming ECFMG certification of the international medical graduate; ~~and~~ ~~(3-26-08)~~( )

g. ~~Such other information as the Board deems relevant in reviewing the registration application. A copy of the applicant's birth certificate or current passport; and~~ ~~(3-15-78)~~( )

h. Such other information as the Board deems relevant in reviewing the registration application. ( )

#### 017. GENERAL PROVISIONS FOR REGISTRATION.

01. **Character.** The Board may refuse to issue or renew registration ~~or to renew registration~~ if it finds that the applicant has engaged in conduct prohibited by Section 54-1814, Idaho Code; provided the Board shall take into consideration the rehabilitation of the applicant and other mitigating circumstances. ~~(3-26-08)~~( )

02. **No Action on Application.** An application upon which the applicant takes no further action will be held for no longer than one (1) year. (3-26-08)

03. **Registration Certificate.** Upon approval of the registration application, the Board may issue a registration certificate which shall set forth the period during which the registrant may engage in activities which may involve the practice of medicine. Each registration shall be issued for a period of not less than one (1) ~~day or more than three (3) years~~ and shall set forth its expiration date on the face of the certificate. Each registration shall identify the supervising physician and alternate supervising physician. Each registrant shall notify the Board in writing of any change of the supervising physician, alternate supervising physician or the program or course of study fourteen (14) days prior to any such change. If the Board deems the intern or resident qualified, and if the course study requires, the Board may additionally certify on the registration certificate that the intern or resident is qualified to write prescriptions for Class III through Class V scheduled medications. ~~(3-26-08)~~( )

04. **Termination of Registration.** The registration of an extern, intern or resident may be terminated, suspended or made conditional by the Board on the grounds set forth in Section 54-1814, Idaho Code, and under the procedures set forth in Section 54-1806A, Idaho Code. (3-15-78)

05. ~~Extension~~ **Annual Renewal of Registration.** Each registration ~~may shall~~ be ~~extended one (1) time and may be extended prior to its expiration date upon approval of a written request to the Board~~ renewed annually prior to its expiration date. ~~Any r~~Registrations not ~~extended~~ renewed by ~~their~~ its expiration date shall be canceled. ~~(3-26-08)~~( )

06. **Notification of Change.** ~~Externs, interns and residents must~~ Each registrant shall notify the Board in writing of any adverse action or termination, whatever the outcome, from any training program or post graduate training program and any name changes within thirty fourteen (30/14) days of such event. ~~(3-26-08)~~( )

07. **Disclosure.** It shall be the responsibility of each registrant to ensure that every patient is aware of the fact that such extern, intern and resident is currently enrolled in a training program or post graduate training program and under the supervision of a licensed physician. This disclosure requirement can be fulfilled by the use of name tags, correspondence, oral statements or such other procedures that under the involved circumstances

adequately advise the patient of the education and training of the extern, intern and resident. (3-26-08)

**018. FEES.**

**01. Registration Fee.** The nonrefundable registration issuance fee shall be no more than twenty-five dollars (\$25). ~~(3-26-08)~~( )

**02. Annual Renewal of Registration Fee.** The nonrefundable registration annual renewal fee shall be no more than twenty-five dollars (\$25). ( )

**023. Other.** Administrative fees for services, including photocopying and review of records shall be billed on the basis of time and charges. ~~(3-15-78)~~( )

## **IDAPA 22 - BOARD OF MEDICINE**

### **22.01.03 - RULES FOR THE LICENSURE OF PHYSICIAN ASSISTANTS**

#### **DOCKET NO. 22-0103-1201 (FEE RULE)**

#### **NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-1806(2), Idaho Code.

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

<b>Tuesday - October 23, 2012 - 1:00 to 2:00 p.m.</b>
<b>Idaho State Board of Medicine Conference Room 1755 Westgate Drive, Suite 140, Boise, ID</b>

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

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

The substance and purpose of this rule change is to require applicants to provide a copy of a birth certificate or passport with their application to document lawful presence in the United States, provide for temporary licensure while awaiting fingerprint-based criminal history check results and compensating the Physician Assistant Advisory Committee members according to Section 59-509(n), Idaho Code, to avoid tax consequences.

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

Addition of the provision for a temporary license mandated establishing an issuance fee, which may be prorated pursuant to Section 54-1808, Idaho Code, and shall be no more than one hundred eighty dollars (\$180). Authority for imposition of fees is found in Sections 54-1806 and 54-18067(4), Idaho Code.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted. The Board also received input and comments from its constituents and licensees.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Nancy M. Kerr, Executive Director, Idaho State Board of Medicine, (208) 327-7000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 21st of August, 2012.

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

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**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 22-0103-1201**

**022. TEMPORARY LICENSE.**

Temporary licenses may be issued exclusively to those applicants who appear to be eligible after submission of completed applications for active physician assistant licenses but such licenses subject to pending results of fingerprint-based criminal history checks of the Idaho central criminal database and the Federal Bureau of Investigation criminal history database. The temporary license shall be valid from the date of issuance to the next regular meeting of the Board, unless extended by the Board upon extenuating circumstances. ( )

**02~~2~~3. -- 025. (RESERVED)**

**(BREAK IN CONTINUITY OF SECTIONS)**

**051. FEES -- LICENSE ISSUANCE, RENEWAL, CANCELLATION AND REINSTATEMENT.**

All licenses to practice as a physician assistant or graduate physician assistant shall be issued for a period of not more than five (5) years. All licenses shall expire on the expiration date printed on the face of the certificate and shall become invalid after that date unless renewed. The Board shall collect a fee for each renewal year. The failure of any person to renew his license shall not deprive such person of the right to renewal, except as provided for herein and Title 67, Chapter 52, Idaho Code. All Fees are nonrefundable. (3-16-04)( )

**01. Licensure Fee.** The fee for initial licensure shall be no more than two hundred fifty dollars (\$250) for a physician assistant and graduate physician assistant. (4-9-09)

**02. License Renewal Fee.** The Board shall collect a fee of no more than one hundred fifty dollars (\$150) for each renewal year of a license. (4-9-09)

**03. License Cancellation.** (3-16-04)

**a.** Failure to renew a license to practice as a physician assistant and pay the renewal fee shall cause the license to be canceled. However, such license can be renewed up to two (2) years following cancellation by payment of past renewal fees, plus a penalty fee of fifty dollars (\$50). After two (2) years, an initial application for licensure with payment of the appropriate fee shall be filed with the Board. In addition, the Board may require evidence of an educational update and close supervision to assure safe and qualified performance. (4-9-09)

**b.** Failure to renew a license to practice as a graduate physician assistant and pay the renewal fee shall cause the license to be canceled. However, such license can be renewed up to six (6) months following cancellation by payment of the past renewal fee, plus a penalty fee of no more than one hundred dollars (\$100). After six (6) months, an original application for licensure with payment of the appropriate fee shall be filed with the Board. (4-9-09)

**04. Inactive License.** (3-16-04)

**a.** A person holding a current license issued by the Board to practice as a physician assistant may be

issued, upon written application provided by the Board and payment of required fees to the Board, an inactive license on the condition that he will not engage in the provision of patient services as a physician assistant in this state. An initial inactive license fee of no more than one hundred fifty dollars (\$150) shall be collected by the Board. (3-16-04)

**b.** Inactive licenses shall be issued for a period of not more than five (5) years and such licenses shall be renewed upon payment of an inactive license renewal fee of no more than one hundred dollars (\$100) for each renewal year. The inactive license certificate shall set forth its date of expiration. (3-16-04)

**c.** An inactive license may be converted to an active license to practice as a physician assistant upon written application and payment of required conversion fees of no more than one hundred fifty dollars (\$150) to the Board. The applicant must account for the time during which an inactive license was held and document continuing competence. The Board may, in its discretion, require a personal interview to evaluate the applicant's qualifications. In addition, the Board may require evidence of an educational update and close supervision to assure safe and qualified performance. (3-16-04)

**05. Volunteer License.** (4-9-09)

**a.** License. Upon completion of an application and verification of qualifications, the Board may issue a volunteer license to a physician assistant who is retired from active practice for the purpose of providing physician assistant service to people who, due to age, infirmity, handicap, indigence or disability, are unable to receive regular medical treatment. (4-9-09)

**b.** Retired Defined. A physician assistant previously holding a license to practice as a physician assistant in Idaho or another state shall be considered retired if, prior to the date of the application for a volunteer's license, he has: (4-9-09)

**i.** Allowed his license with active status to expire with the intent of ceasing active practice as a physician assistant for remuneration; or (4-9-09)

**ii.** Converted his active license to an inactive status with the intention of ceasing to actively practice physician assistant for remuneration; or (4-9-09)

**iii.** Converted his license with active or inactive status to a license with retirement or similar status that proscribed the active practice as a physician assistant. (4-9-09)

**c.** Eligibility. A physician assistant whose license has been restricted, suspended, revoked, surrendered, resigned, converted, allowed to lapse or expire as the result of disciplinary action or in lieu of disciplinary action shall not be eligible for a volunteer license. The volunteer license cannot be converted to a license with active, inactive or temporary status. (4-9-09)

**d.** Application. The application for a volunteer license shall include the requirements listed in Section 021 of these rules and: (4-9-09)

**i.** Verification that the applicant held an active physician assistant license in good standing in Idaho or another state within five (5) years of the date of application for a volunteer license. (4-9-09)

**ii.** The Board may at its discretion issue a volunteer license to a physician assistant who has not held an active license in good standing for greater than five (5) years if the applicant has completed an examination acceptable to the Board that demonstrates the applicant possesses the knowledge and skills required to practice as a physician assistant. (4-9-09)

**06. Temporary Licensure Fee.** The fee for temporary licensure, which may be prorated pursuant to Section 54-1808, Idaho Code, shall be no more than one hundred eighty dollars (\$180). ( )

## IDAPA 22 - BOARD OF MEDICINE

### 22.01.11 - RULES FOR LICENSURE OF RESPIRATORY THERAPISTS AND PERMITTING OF POLYSOMNOGRAPHERS IN IDAHO

DOCKET NO. 22-0111-1201

#### 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 54-4304A, 54-4305, 54-4309, 54-4310, 54-4311, 54-4312 and 54-4316, Idaho Code.

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

<b>Tuesday - October 23, 2012 - 1:00 to 2:00 p.m.</b>
<b>Idaho State Board of Medicine Conference Room 1755 Westgate Drive, Suite 140, Boise, ID</b>

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

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

The substance and purpose of this rule change is to enhance the guidance of polysomnographic trainees via direct on-site supervision, prohibit polysomnographic technicians from applying for temporary permits as polysomnographic trainees and requiring an original and one (1) electronic copy of all documents in contested case proceedings.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: There will be no increase in fees. Authority for imposition of fees is found in Sections 54-1806 and 54-1806A (4), Idaho Code.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted. The Board received input and comments from its constituents and licensees.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Nancy M. Kerr, Executive Director, Idaho State Board of Medicine, (208) 327-7000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 21st of August, 2012.

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 OF DOCKET NO. 22-0111-1201**

**006. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.**

The central office of the Board of Medicine will be in Boise, Idaho. The Board's mailing address, unless otherwise indicated, will be Idaho State Board of Medicine, P.O. Box 83720, Boise, Idaho 83720-0058. The Board's street address is 1755 Westgate Drive, Suite 140, Boise, Idaho 83704. The telephone number of the Board is (208) 327-7000. The Board's facsimile (FAX) number is (208) 327-7005. The Board's web site is [www.bom.state-id.us/idaho.gov](http://www.bom.state-id.us/idaho.gov). The Board's office hours for filing documents are 8 a.m. to 5 p.m. MST. (3-30-06)( )

**007. FILING OF DOCUMENTS -- NUMBER OF COPIES.**

All documents in rulemaking or contested case proceedings must be filed with the office of the Board. The original and ~~ten~~ one (1) electronic copy of all documents must be filed with the office of the Board. (3-16-04)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS.**

- 01. Act.** The Respiratory Care Practice Act of 1991, Title 54, Chapter 43, Idaho Code. (4-28-93)
- 02. Applicant.** A person who applies for a license, dual license/permit, permit, conditional permit, or a temporary permit pursuant to this chapter and Title 54, Chapter 43, Idaho Code. (3-16-04)
- 03. Board.** The Idaho State Board of Medicine, established pursuant to Section 54-1805, Idaho Code. (3-16-04)
- 04. Board of Registered Polysomnographic Technologists.** A nationally recognized private testing, examining and credentialing body for the polysomnography related respiratory care profession. (3-16-04)
- 05. Certified Pulmonary Function Technologist (CPFT).** The professional designation earned by a person who has successfully completed the entry level pulmonary function certification examination administered by the National Board for Respiratory Care, Inc., or by an equivalent board, recognized by the Board. (3-16-04)
- 06. Certified Respiratory Therapist (CRT).** The professional designation earned by a person who has successfully completed the entry level examination administered by the National Board for Respiratory Care, Inc., or by an equivalent board, recognized by the Board. (3-16-04)
- 07. Comprehensive Registry Exam.** The comprehensive registry examination administered by the Board of Registered Polysomnographic Technologists, or administered by an equivalent board, recognized by the Board, the successful completion of which entitles a person to the professional designation of Registered Polysomnographic Technologist (RPSGT). (3-16-04)
- 08. Conditional Permit.** A time-restricted permit issued by the Board, upon the recommendation of the Licensure Board, as set forth in this chapter and Section 54-4304A, Idaho Code, to a registered polysomnographic technologist, polysomnographic technician or a polysomnographic trainee, on or after January 1, 2004, and issued until issuance of permits as provided in this chapter. (3-16-04)
- 09. Entry Level Examination.** The certification examination for entry level respiratory therapy practitioners administered by the National Board for Respiratory Care, Inc., or certification examination administered by an equivalent board, recognized by the Board, the successful completion of which entitles a person to the professional designation of "Certified Respiratory Therapist" (CRT). (3-16-04)

- 10. Licensed Physician.** A physician licensed to practice medicine and surgery or osteopathic medicine and surgery, by the Idaho State Board of Medicine. (3-16-04)
- 11. Licensure.** The issuance of a license to an applicant under the provisions of this chapter and Title 54, Chapter 43, Idaho Code entitling such person to hold himself out as a respiratory care practitioner and to practice or perform respiratory care in this state. (3-16-04)
- 12. Licensure Board.** The Licensure Board established by this chapter and Section 54-4313, Idaho Code. (3-16-04)
- 13. Medical Practice Act.** The Medical Practice Act of 1977, Title 54, Chapter 18, Idaho Code. (3-26-08)
- 14. National Board of Respiratory Care, Inc.** A nationally recognized private testing, examining and credentialing body for the respiratory care profession. (3-16-04)
- 15. Performance of Respiratory Care.** Respiratory care practiced or performed in accordance with the written, telephonic or verbal prescription of a licensed physician and includes, but is not limited to, the diagnostic and therapeutic use of the following: administration of medical gases, (except for the purpose of anesthesia), aerosols and humidification; environmental control mechanisms and hyperbaric therapy, pharmacologic agents related to respiratory care protocols, mechanical or physiological ventilatory support; bronchopulmonary hygiene, cardiopulmonary resuscitation; maintenance of the natural airway; insertion and maintenance of artificial airways; specific diagnostic and testing techniques employed in the medical management of patients to assist in diagnosis, monitoring, treatment and research of pulmonary abnormalities, including measurements of ventilatory volumes, pressures and flows, collection, reporting and analysis of specimens of blood and blood gases, arterial punctures, insertion and maintenance of arterial lines, expired and inspired gas samples, respiratory secretions, and pulmonary function testing; and hemodynamic and other related physiologic measurements of the cardiopulmonary system, observation and monitoring of signs and symptoms, general behavior, general physical response to respiratory care treatment and diagnostic testing and determination of whether such signs, symptoms, reactions, behavior or general response exhibit abnormal characteristics; implementation based on observed abnormalities of appropriate reporting or referral of respiratory care or changes in treatment regimen, pursuant to a prescription by a physician or the initiation of emergency procedures. (4-28-93)
- 16. Permit.** The issuance of a permit to an applicant under the provisions of this chapter and Section 54-4304A, Idaho Code, entitles such person to hold himself out as a registered polysomnographic technologist, polysomnographic technician, or polysomnographic trainee and to perform polysomnography related respiratory care in this state. (3-16-04)
- 17. Person.** A natural living human individual. (3-16-04)
- 18. Polysomnographic Technician.** A person who holds a permit as set forth in this chapter and Section 54-4304A, Idaho Code, and who performs polysomnography related respiratory care services under the supervision of an Idaho permitted registered polysomnographic technologist, licensed respiratory care practitioner or an Idaho licensed physician. (3-16-04)
- 19. Polysomnographic Trainee.** A person who holds a temporary permit as set forth in this chapter and Section 54-4304A, Idaho Code, and who performs polysomnography related respiratory care services under the direct supervision of an Idaho licensed respiratory care practitioner, or a person exempt from such licensure pursuant to this chapter and Section 54-4308, Idaho Code, an Idaho permitted registered polysomnographic technologist, an Idaho permitted polysomnographic technician or an Idaho licensed physician. Direct supervision by an Idaho licensed respiratory care practitioner, or such person exempt from such licensure pursuant to this chapter and Section 54-4308, Idaho Code, or an Idaho permitted registered polysomnographic technologist or technician, or an Idaho licensed physician, means that such a person shall be on the premises same site where such polysomnographic related respiratory care services are provided and shall be immediately available for consultation with the polysomnographic trainee. ~~(3-16-04)~~ ( )
- 20. Polysomnography.** The process of analysis, attended monitoring and recording of physiologic data

during sleep and wakefulness to assist in the assessment and diagnosis of sleep/wake disorders and other disorders, syndromes and dysfunctions that either are sleep related, manifest during sleep or disrupt normal sleep/wake cycles and activities. (3-16-04)

**21. Polysomnography Related Respiratory Care Services.** The limited practice of respiratory care in the provision of polysomnography services, under the supervision of an Idaho licensed physician, by a person at a sleep disorder center or laboratory who holds a permit issued by the Board, as a registered polysomnographic technologist, polysomnographic technician or a polysomnographic trainee, or who is otherwise licensed as a respiratory care practitioner or who is exempt from licensure or permitting pursuant to this chapter and Section 54-4308, Idaho Code. Polysomnography related respiratory care services include therapeutic and diagnostic use of oxygen, noninvasive ventilatory assistance of spontaneously breathing patients and cardiopulmonary resuscitation and maintenance of nasal and oral airways that do not extend into the trachea, as ordered by an Idaho licensed physician or by written procedures and protocols of the associated sleep disorder center or laboratory as approved by an Idaho licensed physician and which do not violate any rules adopted by the Board. This chapter does not in any way authorize the practice of medicine or any of its branches by any person not so licensed by the Board. Further, licensed respiratory practitioners, and those exempt from licensure pursuant to this chapter and Section 54-4308, Idaho Code, are not limited in their scope of practice of provision of respiratory care, which they may provide, including care in connection with the provision of polysomnography services. (3-16-04)

**22. Practice of Respiratory Care.** Means, but shall not be limited to, the provision of respiratory and inhalation therapy which shall include, but not be limited to: therapeutic and diagnostic use of medical gases, humidity and aerosols including the maintenance of associated apparatus; administration of drugs and medications to the cardiorespiratory system; provision of ventilatory assistance and ventilatory control; postural drainage, percussion, breathing exercises and other respiratory rehabilitation procedures; cardiopulmonary resuscitation and maintenance of natural airways, the insertion and maintenance of artificial airways; and the transcription and implementation of a physician's written, telephonic or verbal orders pertaining to the practice of respiratory care. It also includes testing techniques employed in respiratory care to assist in diagnosis, monitoring, treatment and research. This shall be understood to include, but not be limited to, measurement of ventilatory volumes, pressures and flows, specimen collection of blood and other materials, pulmonary function testing and hemodynamic and other related physiological monitoring of the cardiopulmonary system. The practice of respiratory care is not limited to the hospital setting but shall be performed under the general supervision of a licensed physician. (4-28-93)

**23. Respiratory Care Protocols.** Policies, procedures or protocols developed or instituted by health care facilities or institutions, through collaboration when appropriate or necessary with administrators, physicians, registered nurses, physical therapists, respiratory care practitioners and other licensed, certified or registered health care practitioners. (4-28-93)

**24. Registered Polysomnographic Technologist (RPSGT).** The professional designation earned by a person who has successfully completed the comprehensive registry examination administered by the Board of Registered Polysomnographic Technologists, or by an equivalent board, recognized by the Board, and who holds a permit as set forth in this chapter and Section 54-4304A, Idaho Code, and who works under the supervision of an Idaho licensed physician to provide polysomnography related respiratory care services. (3-16-04)

**25. Registered Pulmonary Function Technologist (RPFT).** The professional designation earned by a person who has successfully completed the advanced pulmonary function certification examination administered by the National Board for Respiratory Care, Inc., or an advanced pulmonary function certification examination administered by an equivalent board, recognized by the Board. (3-16-04)

**26. Registered Respiratory Therapist (RRT).** The professional designation earned by a person who has successfully completed the written registry and clinical simulation examinations administered by the National Board for Respiratory Care, Inc., or certification examinations administered by an equivalent board, recognized by the Board. (3-16-04)

**27. Respiratory Care.** Allied health profession responsible for the treatment, management, diagnostic testing, control and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system, under the general supervision of a licensed physician. (2-23-94)

- 28. Respiratory Care Practitioner.** A person who has been issued a license by the Board. (3-16-04)
- 29. Respiratory Therapist.** A person who practices or provides respiratory care. (4-28-93)
- 30. Respiratory Therapy.** The practice or performance of respiratory care, including but not limited to, inhalation therapy. (4-28-93)
- 31. Sleep Disorder Center or Laboratory.** A facility for sleep related disorders that provides polysomnography and is under the supervision of an Idaho licensed physician or medical director licensed by the Board who is responsible for patient care provided in such center or laboratory. A sleep disorder center or laboratory that provides polysomnography related respiratory care to patients shall have an Idaho licensed respiratory care practitioner, an Idaho permitted registered polysomnographic technologist, an Idaho permitted polysomnographic technician, or a person exempt from licensure or permitting pursuant to this chapter and Section 54-4308, Idaho Code, in constant attendance. (3-16-04)
- 32. Supervision of Respiratory Care.** The practice or provision of respiratory care by persons holding a student or consulting and training exemption, or temporary permit shall be in direct association with a respiratory care practitioner or licensed physician who shall be responsible for the activities of the person being supervised and shall review and countersign all patient documentation performed by the person being supervised. The supervising respiratory care practitioner or licensed physician need not be physically present or on the premises at all times but must be available for telephonic consultation. The extent of communication between the supervising or consulting respiratory care practitioner or licensed physician and the person being supervised shall be determined by the competency of the person, the treatment setting, and the diagnostic category of the client. (3-26-08)
- 33. Temporary Permit.** The Board may issue a temporary permit, limited to a total period of two (2) years, including initial and renewal, to a respiratory care practitioner applicant who meets the requirements set forth in this chapter and Section 54-4307, Idaho Code. The Board may issue a temporary permit, limited to a total period of two (2) years, including initial and renewal, to a polysomnographic trainee applicant who meets the requirements set forth in this chapter and Section 54-4304A, Idaho Code. (3-16-04)
- 34. Written Registry and Clinical Simulation Examinations.** The certification examinations administered by the National Board of Respiratory Care, Inc., or certification examinations administered by an equivalent board, recognized by the Board, the successful completion of which entitles a person the professional designation of "Registered Respiratory Therapist" (RRT). (3-16-04)

**(BREAK IN CONTINUITY OF SECTIONS)**

**032. APPLICATION FOR LICENSURE AND PERMITS.**

- 01. All Applications.** Each applicant for licensure or permit shall submit a completed written application to the Board on forms prescribed by the Board, together with the application fee. The Board may, in its discretion, prorate the application fees charged in conjunction with an application for initial licensure or a temporary permit if such license or temporary permit shall, upon issuance, remain valid for less than one (1) full calendar year before the required renewal date as provided for in Sections 54-4309 and 54-4310, Idaho Code. The application shall be verified and under oath and shall require documentation of the following information: (4-11-06)
- a.** The disclosure of any criminal conviction or charges against the applicant other than minor traffic offenses, what ever the outcome; and (2-23-94)( )
- b.** The disclosure of any charge, investigation or disciplinary action against the applicant by any state professional regulatory agency or professional organization that bears a demonstrable relationship to the ability of the applicant to practice in accordance with the provisions of this chapter; and (3-16-04)
- c.** The disclosure of the denial of registration or licensure by any country, state or district regulatory

body; and (3-26-08)

**d.** Not less than two (2) certificates of recommendation from persons, other than relatives or persons living with the applicant, who have personal knowledge of at least one (1) year of the applicant's character and the applicant's ability to work as a respiratory therapist or provide polysomnography related respiratory care services; and (3-26-08)

**e.** One (1) unmounted photograph of the applicant, no larger than three by four inch (3" x 4") (head and shoulders), taken not more than one (1) year prior to the date of the application; and (2-23-94)

**f.** Such other information as deemed reasonably necessary and as is lawful for the Board to identify and evaluate the applicant's credentials; and (3-16-04)

**g.** Evidence that applicant is no less than eighteen (18) years of age. (3-16-04)

**h.** The Board may, at its discretion, require the applicant to appear for a personal interview. (3-16-04)

**02. Application for Respiratory Care Practitioner.** (3-16-04)

**a.** Documentation of evidence that applicant has passed the entry level examination and is a Certified Respiratory Therapist (CRT) or has successfully completed the written registry and clinical simulation examinations and is a Registered Respiratory Therapist (RRT); or (3-16-04)

**b.** Documentation that the applicant is licensed as a respiratory care practitioner, or the equivalent at the discretion of the Board, in another state, district or territory of the United States. (3-16-04)

**c.** Application for Temporary Permit. The Board may issue a temporary permit to an applicant who meets the requirements set forth in this chapter and Section 54-4307, Idaho Code. A temporary permit shall authorize the practice of respiratory care under the supervision of a respiratory care practitioner or licensed physician. (3-16-04)

**i.** A temporary permit for a respiratory care practitioner may be converted to a permanent license by providing to the Board, verification of appropriate certification as a Certified Respiratory Therapist (CRT) or Registered Respiratory Therapist (RRT). (3-16-04)

**ii.** A temporary permit shall be effective for one (1) year from the date of issuance. (4-28-93)

**iii.** A temporary permit may be renewed one (1) time only for a period of one (1) year, upon application to the Board. (~~4-28-93~~)(      )

**iv.** Application for a temporary permit shall be made to the Board on a form prescribed by the Board, together with the application fee. The Board may, in its discretion, prorate the application fees charged in conjunction with an initial application for a temporary permit if such temporary permit shall, upon issuance, remain valid for less than one (1) full calendar year before the required renewal date as provided for in Sections 54-4309 and 54-4310, Idaho Code. (4-11-06)

**03. Application for Inactive License.** A person holding a current license issued by the Board to practice as a respiratory care practitioner may be issued, upon written application provided by the Board and payment of required fees to the Board, an inactive license on the condition that he will not engage in the provision of respiratory care services as a respiratory care practitioner in this state. (3-16-04)

**a.** Issuance and Renewal. Inactive licenses shall be issued for a period of not more than five (5) years and such licenses shall be renewed upon payment of an inactive license renewal fee of no more than one hundred dollars (\$100) for each renewal year. Such inactive licenses shall expire on the expiration date printed on the face of the certificate unless renewed. (3-26-08)

**b.** Inactive to Active License. An inactive license may be converted to an active license to practice as

a respiratory care practitioner upon written application and payment of active licensure fees for each inactive year minus paid inactive fees plus a conversion fee of no more than one hundred dollars (\$100) to the Board. The applicant must account for the time during which an inactive license was held and document continuing competence. The Board may, in its discretion, require a personal interview to evaluate the applicant's qualifications. In addition, the Board may require evidence of an educational update and close supervision to assure safe and qualified performance. (3-26-08)

**04. Application for Respiratory Care and Polysomnography Related Respiratory Care Practitioner.** (3-16-04)

**a.** The Board may issue a dual license/permit to an applicant who meets the requirements set forth in this chapter and Sections 54-4306 and 54-4304A(2) and (3), Idaho Code. A dual license/permit shall authorize the holder to perform respiratory care and polysomnography related respiratory care in this state. (3-16-04)

**b.** Application for a dual license/permit shall be made to the Board on a form prescribed by the Board, together with the application fee. (3-16-04)

**c.** Such dual license/permit shall expire on the expiration date printed on the face of the certificate unless renewed. (3-16-04)

**05. Application for Polysomnography Related Respiratory Care Practitioner.** (3-16-04)

**a.** Only persons who are licensed as respiratory care practitioners or who are exempt from licensure pursuant to the chapter and Section 54-4308, Idaho Code, or who hold a permit issued by the Board as registered polysomnographic technologists, polysomnographic technicians or polysomnographic trainees may provide polysomnography related respiratory care services. (3-16-04)

**b.** Qualifications for permit. An applicant for a permit to provide polysomnography related respiratory care services as a registered polysomnographic technologist or polysomnographic technician or for a temporary permit as a polysomnographic trainee under the provisions of Section 032 who is not otherwise licensed to provide respiratory care services or exempt from the requirements of this chapter pursuant to Section 54-4308, Idaho Code, must provide documentation of: (3-16-04)

**i.** Being a high school graduate or have passed a general educational development (GED) examination and earned a GED certificate; and (3-16-04)

**ii.** Being currently certified in cardiopulmonary resuscitation (CPR). (3-16-04)

**c.** Application for Registered Polysomnographic Technologist. An applicant must provide documentation of successful completion of the comprehensive registry examination as a registered polysomnographic technologist administered by the Board of Registered Polysomnographic Technologists or an equivalent examination, approved by the Board as recommended by the Licensure Board. (3-16-04)

**d.** Application for Polysomnographic Technician. An applicant must provide written documentation and a signed affidavit affirming and attesting to one (1) of the following qualifications: (3-16-04)

**i.** Successful completion of a polysomnography program of not less than one (1) year duration, associated with a state licensed or a nationally accredited educational facility, as approved by the Board, as recommended by the Licensure Board; or (3-16-04)

**ii.** Successful completion of a minimum of seven hundred twenty (720) hours of experience as a polysomnographic trainee with documented proficiency in polysomnography related respiratory care services, as approved by the Board, as recommended by the Licensure Board. (3-16-04)

**e.** Application for Polysomnographic Trainee. An applicant must provide a signed affidavit from an Idaho permitted registered polysomnographic technologist, an Idaho permitted polysomnographic technician, an Idaho licensed respiratory care practitioner, or an Idaho licensed physician affirming and attesting he shall ensure that

there is direct supervision of performance of basic polysomnography related respiratory care services by a polysomnographic trainee applicant. The direct supervisor shall be on the premises where such polysomnographic related respiratory care services are provided and shall be immediately available for consultation with the polysomnographic trainee applicant. The Affiant need not be the direct supervisor at any given time. Such Affiant shall be responsible for the activities of the supervised polysomnographic trainee and shall document his review of all patient documentation performed by the supervised polysomnographic trainee. If at any time during the term of the polysomnographic trainee's permit, the Affiant of the trainee changes, the polysomnographic trainee shall provide a signed affidavit from his new Affiant who will ensure that the trainee has direct supervision. In addition, the applicant shall provide written documentation he has at least one (1) of the following qualifications: (3-16-04)

i. At least seven hundred twenty (720) hours of experience as a paid employee or contractor in a health care related field. For the purposes of this Section, experience as a paid employee or contractor in a health care related field shall include any work providing direct clinical care to patients or having worked in a clinical care setting in which the applicant had direct interaction with patients, and an opportunity to observe the provision of clinical care to patients; (3-16-04)

ii. Current enrollment in a polysomnography program associated with a state licensed or a nationally accredited education facility; or (3-16-04)

iii. Successful completion of twenty-four (24) semester credit hours (or a quarter (1/4) hour system equivalent of the same) of postsecondary education at a state licensed or nationally accredited facility. (3-16-04)

**f. Permits.** All permits shall be issued after applicants have met the requirements of this chapter and Section 54-4304A, Idaho Code and submitted a completed application and payment of a fee in an amount to be fixed by the Board for a period of not less than one (1) year nor more than five (5) years, the exact period to be fixed by the Board. Such permits shall expire on the expiration date printed on the face of the certificate unless renewed. The failure of any person to renew a renewable permit shall not deprive such person of the right to renewal, except as provided for herein and Section 54-4312, Idaho Code. The Board shall collect a fee in an amount to be fixed by the Board for the initial issuance and each renewal year. (3-16-04)

i. Permits for registered polysomnographic technologists, including renewals, shall be issued for a period of not less than one (1) year nor more than five (5) years. Such permits shall be renewed on their expiration date upon completion of a renewal application and upon payment of a renewal fee. (3-16-04)

ii. Permits for polysomnographic technicians, including renewals, shall be issued for a period of one (1) year, and shall be renewed for successive one (1) year periods, not to exceed three (3) renewals for a total period of four (4) years. Such permits shall be renewed on their expiration date upon completion of a renewal application and upon payment of a renewal fee. (3-16-04)

iii. Temporary permits for polysomnographic trainees shall be issued for a period of not more than one (1) year, the exact period to be fixed by the Board. Such permits may be renewed on their expiration date upon completion of a renewal application and upon payment of a renewal fee, for a period of one (1) year, with renewal limited to one (1) such renewal, provided however, such permits for polysomnographic trainees shall be limited to a total period of two (2) years. The Board may, in its discretion, prorate the application fees charged in conjunction with an initial application for a temporary permit if such temporary permit shall, upon issuance, remain valid for less than one (1) full calendar year before the required renewal date as provided for in Sections 54-4309 and 54-4310, Idaho Code. Those who have held permits as a polysomnographic technicians are prohibited from making application for temporary permits as a polysomnographic trainees. (4-11-06)( )

iv. Reinstatement after failure to renew. Permits canceled for nonpayment of renewal fees may be reinstated by filing a completed request for renewal with the Board and paying a reinstatement fee, and back renewal fees. (3-16-04)

v. Reapplication after failure to renew. A registered polysomnographic technologist, whose permit has been canceled for failure to renew for a period of more than two (2) years, shall be required to make application to the Board as a new applicant for a permit. A polysomnographic technician, whose permit has been canceled for failure to renew for a period of more than one (1) year, shall be required to make application to the Board as a new

applicant for a permit. Temporary permits for polysomnographic trainees whose permits have been canceled for failure to renew for a period of more than six (6) months shall be required to make application to the Board as new applicants for permits. (3-16-04)

vi. Continuing education. Each individual applicant for renewal of an active permit shall, on or before the expiration date of the permit, submit satisfactory proof to the Licensure Board of successful completion of not less than twelve (12) hours of approved continuing education pertaining to the provision of polysomnographic-related respiratory care per year in addition to any other requirements for renewal as adopted by the Board. The Board, as recommended by the Licensure Board, may substitute all or a portion of the coursework required in Section 032 when an applicant for renewal shows evidence of passing an approved challenge exam or of completing equivalent education as determined by the Board, as recommended by the Licensure Board, to be in full compliance with the education requirements of this chapter. (3-16-04)

g. Conditional Permits. Any person who desires to provide polysomnography related respiratory care services as described in Section 54-4304A, Idaho Code, and this chapter and who meets the requirements of Subsection 032.03, as well as the necessary requirements in Subsections 032.05.g.i. through 032.05.g.iv., may make application for a conditional permit. Conditional permits shall be issued on or after January 1, 2004, as outlined in Section 54-4304A(8), Idaho Code, and shall be issued until the Board has adopted rules as may be required for the issuance of regular permits as provided in this chapter and has had an opportunity to process applications for such regular permits. (3-26-08)



**IDAPA 22 - BOARD OF MEDICINE**  
**22.01.12 - RULES RELATING TO HEALTH CARE WORKERS**  
**DOCKET NO. 22-0112-1201 (CHAPTER REPEAL)**  
**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-1806A, Idaho Code.

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

<b>Tuesday - October 23, 2012 - 1:00 to 2:00 p.m.</b>
<b>Idaho State Board of Medicine Conference Room 1755 Westgate Drive, Suite 140, Boise, ID</b>

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

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: The purpose of this proposed rule change is to repeal IDAPA 22.01.12, "Rules Relating to Health Care Workers." This proposed rule repeal is necessary due to obsolescence and redundancy. Enacted in 1993, these rules have never been utilized or employed for any health care worker licensed by the Board. Existing rules govern in cases of inability of licensees to practice with reasonable skill or safety.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 not conducted. The Board also received input and comments from its constituents and licensees.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Nancy M. Kerr, Executive Director, Idaho State Board of Medicine, (208) 327-7000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 21st of August, 2012.

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

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**IDAPA 22.01.12 IS BEING REPEALED IN ITS ENTIRETY**

**IDAPA 22 - BOARD OF MEDICINE**  
**22.01.13 - RULES FOR THE LICENSURE OF DIETITIANS**  
**DOCKET NO. 22-0113-1201 (FEE RULE)**  
**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-3505(2), Idaho Code.

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

<b>Tuesday - October 23, 2012 - 1:00 to 2:00 p.m.</b>
<b>Idaho State Board of Medicine Conference Room 1755 Westgate Drive, Suite 140, Boise, ID</b>

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

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

The substance and purpose of these proposed Rule changes include providing the Board's website and E-mail address, provision for severability, provisions for denial or refusal to renew a license, the suspension or revocation of a license and it amends the fee schedule based on future administration costs for change in license status. Amending the fee schedule may also be necessary to balancing the Board's future budget.

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

The Idaho State Board of Medicine and Dietetic Licensure Board approved of amending the Fee schedule in anticipation of rising administrative costs. Authority for imposition of fees is found in Sections 54-1806 and 54-3509(2), Idaho Code.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted. The Board also received input and comments from its constituents and licensees.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2) (a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Nancy M. Kerr, Executive Director, Idaho State Board of Medicine, (208) 327-7000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 21st of August, 2012.

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

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**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 22-0113-1201**

**006. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.**

The central office of the Board of Medicine will be in Boise, Idaho. (4-2-03)

**01. Address.** The Board's mailing address, unless otherwise indicated, will be Idaho State Board of Medicine, Statehouse Mail, Boise, Idaho 83720. The Board's street address is 1755 Westgate Drive, Suite 140, Boise, Idaho 83704. (4-2-03)

**02. Telephone.** The telephone number of the Board is (208) 327-7000. (4-2-03)

**03. FAX.** The Board's facsimile (FAX) number is (208) 327-7005. (4-2-03)

**04. Office Hours.** The Board's office hours for filing documents are 8 a.m. to 5 p.m. MST. (4-2-03)

**05. Website.** The Board's website is [bom.idaho.gov](http://bom.idaho.gov). ( )

**007. FILING OF DOCUMENTS -- NUMBER OF COPIES.**

All documents in rulemaking or contested case proceedings must be filed with the office of the Board. The original and ~~ten~~ one (1) electronic ~~copies~~ of all documents must be filed with the office of the Board. ~~(3-16-04)~~( )

**008. SEVERABILITY.**

The sections and subsections of these administrative rules are presumed severable unless specifically provided to the contrary. If any rule, or part thereof, or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of any remaining portion. ( )

~~008.~~ **009. (RESERVED)**

**(BREAK IN CONTINUITY OF SECTIONS)**

**032. DENIAL OR REFUSAL TO RENEW, SUSPENSION OR REVOCATION OF LICENSE.**

**01. Disciplinary Authority.** A new or renewal application may be denied or a license may be suspended or revoked by the Board, and every person licensed pursuant to Title 54, Chapter 35, Idaho Code and these rules is subject to discipline disciplinary actions or probationary conditions pursuant to the procedures and powers established by and set forth in Section 54-3710, Idaho Code, IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," and IDAPA 22.01.07, "Rules of Practice and Procedure of the Board of Medicine." ~~(4-2-03)~~( )

**02. Grounds for Discipline.** In addition to the grounds set forth in Section 54-3510, Idaho Code, applicants may be refused licensure and licensees are subject to discipline upon the following grounds, including but not limited to: (12-28-94)

- a.** Being guilty of unprofessional conduct, including the provision of care which fails to meet the standard of care provided by other qualified licensees within the state of Idaho. (12-28-94)
- b.** Violating any provisions of this act or any of the rules promulgated by the Board under the authority of the act. (12-28-94)
- c.** Being convicted of a crime which may or would have a direct and adverse bearing on the licensee's ability to practice dietetics; ( )
- d.** Demonstrating a manifest incapacity to carry out the functions of the licensee's ability to practice dietetics or deemed unfit by the Board to practice dietetics; ( )
- e.** Using any controlled substance or alcohol which may or would have a direct and adverse bearing on the licensee's ability to practice dietetics; ( )
- f.** Misrepresenting educational or experience attainments; ( )
- g.** Failing to maintain adequate dietetic records. Adequate dietetic records mean legible records that contain subjective information, an evaluation or report of objective findings, assessment or diagnosis, and the plan of care; ( )
- h.** Failure to monitor and be responsible for the activities of the provisionally licensed graduate dietitian; ( )
- i.** Employing, directing or supervising the unlicensed practice of dietetics; ( )
- j.** Practicing in an area of dietetics for which the licensee is not trained; ( )
- k.** Commission of any act of sexual contact, misconduct, exploitation or intercourse with a patient or former patient or related to the licensee's practice of dietetics; ( )
- l.** Failing to report to the Board any known act or omission of a licensee, applicant, or any other person, that violates any of the rules promulgated by the Board under the authority of the act; ( )
- m.** Interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts or by use of threats or harassment against any patient or witness to prevent them from providing evidence in a disciplinary proceeding, investigation or other legal action; ( )
- n.** Failure to obey federal and local laws and rules governing the practice of dietetics; or ( )
- o.** Failure to be lawfully present in the United States. ( )

**033. -- 040. (RESERVED)**

**041. FEES.**

Actual fees shall be set to reflect costs of Board administration. (12-28-94)

**01. Initial/Provisional Licensure and Examination Fee.** The fee for initial licensure and examination shall be no more than ~~eighty one hundred fifty~~ dollars (\$~~8150~~). (~~4-2-03~~)( )

**02. Renewal Fee.** The annual renewal fee shall be no more than ~~forty-five one hundred~~ dollars (\$~~45100~~). (~~12-28-94~~)( )

**03. Reinstatement Fee.** The reinstatement fee for a lapsed license shall be the annual renewal fee for each year of the two (2) years not licensed plus a fee of no more than ~~thirty-five fifty~~ dollars (\$~~350~~). Lapsed licenses not reinstated after two (2) years shall be canceled. (~~12-28-94~~)( )

- 04. Inactive Fee.** The fee for inactive licensure shall be ~~no more than twenty-five~~ **fifty** dollars (\$~~250~~).  
(12-28-94)( )
- 05. Inactive to Active License Fee.** An inactive license may be converted to an active license by application to the Board and payment of required fees. (4-2-03)
- a.** The fee for converting an inactive license to an license shall be a fee of ~~no more than thirty-five~~ **fifty** dollars (\$~~350~~) and the annual renewal fee for each year not actively licensed minus inactive fees previously paid.  
(4-2-03)( )
- b.** Before the license will be converted, the applicant must account for the time during which an inactive license was held. The Board, in its discretion, may require a personal interview. (4-2-03)
- 06. Application Fees and Refunds.** Necessary fees shall accompany applications. Fees shall not be refundable. (4-2-03)
- 07. Extraordinary Expenses.** In situations where the processing of an application ~~or a change in status~~ requires extraordinary expenses, the Board will charge the applicant with reasonable fees to cover all ~~or part of~~ the extraordinary expenses.  
(4-2-03)( )

## IDAPA 22 - BOARD OF MEDICINE

### 22.01.14 - RULES RELATING TO COMPLAINT INVESTIGATION

DOCKET NO. 22-0114-1201

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-1806(2), Idaho Code.

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

<b>Tuesday - October 23, 2012 - 1:00 to 2:00 p.m.</b>
<b>Idaho State Board of Medicine Conference Room 1755 Westgate Drive, Suite 140, Boise, ID</b>

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

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

This rule change is required to assure the public health, safety and welfare in the state of Idaho by updating and clarifying the complaint investigation process. This rule change will provide explanations and information for those wishing to file a complaint against a licensee.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 not conducted. The Board also received input and comments from its constituents and licensees.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2) (a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Nancy M. Kerr, Executive Director, Idaho State Board of Medicine, (208) 327-7000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 21st of August, 2012.

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 OF DOCKET NO. 22-0114-1201**

**002. WRITTEN INTERPRETATIONS.**

Written interpretations of these rules in the form of explanatory comments accompanying the notice of proposed rule-making that originally proposed the rules and review of comments submitted in the rulemaking process in the adoption of these rules are available for review and copying at cost from the Board ~~Of Medicine~~, 1755 Westgate Drive, Suite 140, Box 83720 Boise, Idaho 83720-0058. (3-30-01)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**006. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.**

The central office of the Board ~~of Medicine will~~ shall be in Boise, Idaho. The Board's mailing address, unless otherwise indicated, ~~will~~ shall be Idaho State Board of Medicine, Statehouse Mail, Boise, Idaho 83720. The Board's street address is 1755 Westgate Drive, Suite 140, Boise, Idaho 83704. The telephone number of the Board is (208) 327-7000. The Board's facsimile (FAX) number is (208) 377-7005. ~~The Board's website is www.bom.idaho.gov.~~ The Board's office hours for filing documents are 8:00 a.m. to 5:00 p.m. MST. (3-30-01)(\_\_\_\_)

**007. FILING OF DOCUMENTS -- NUMBER OF COPIES.**

All documents in rulemaking or contested case proceedings must be filed with the office of the Board. The original and ~~ten one~~ (10) ~~electronic~~ copies of all documents must be filed with the office of the Board. (3-16-04)(\_\_\_\_)

**008. -- 009. (RESERVED)**

**010. COMPLAINTS.**

~~All received~~ ~~C~~complaints ~~received, which are~~ related to allegations against health care providers regulated by the Board, shall be referred to the appropriate Quality Assurance ~~staff~~ Specialist (QAS). (3-30-01)(\_\_\_\_)

**011. FORMAT FOR SUBMISSION OF COMPLAINT.**

Complaints ~~will~~ shall be submitted in writing to the Board, ~~with and include, but are not limited to,~~ the name of the provider, the approximate date of the incident or care, the ~~individual's~~ concerns regarding the incident or care, and the ~~name~~ complainant's signature, telephone number, and address ~~of the complainant~~. (3-15-02)(\_\_\_\_)

**012. DETERMINATION OF AUTHORITY.**

After preliminary investigation, ~~the Quality Assurance Specialist a~~ (QAS) shall determine if the complaint falls within the ~~Board's~~ statutory authority ~~of the Board~~ as defined in the appropriate practice act and rules. Questions related to jurisdiction ~~will~~ shall be referred to the Executive Director and/or Board Counsel. (3-15-02)(\_\_\_\_)

**01. Outside Statutory Authority.** If the complaint falls outside of the ~~Board's~~ statutory authority ~~of the Board~~, the QAS shall notify the complainant in writing and may offer referral to an appropriate agency, if indicated. The ~~staff will~~ Board shall maintain a copy of the complaint, response, and the preliminary investigation file for a period of one (1) year. Each ~~file~~ complaint determined to be outside the ~~Board's~~ statutory authority ~~of the Board~~ ~~will~~ shall be reviewed by the Committee on Professional Discipline at its next scheduled meeting. (3-15-02)(\_\_\_\_)

**02. Within Statutory Authority.** If the complaint falls within the ~~Board's~~ authority ~~of the Board~~, the QAS ~~will~~ shall: (3-30-01)(\_\_\_\_)

- a. Establish a complaint file; (3-30-01)
- b. Assign a case number; (3-30-01)
- c. Enter ~~the complaint~~ information ~~regarding the complaint o~~ into the ~~Board's~~ database. (3-30-01)(\_\_\_\_)

d. Correspond in writing ~~with to~~ the complainant ~~and the provider~~ within ten (10) business days, when possible, ~~explaining the nature of the complaint~~ and provide written information regarding the complaint process; ~~(3-30-01)( )~~

e. Correspond in writing to the provider within ten (10) business days, when possible, explaining the nature of the complaint and ~~P~~provide written information ~~to the complainant and provider~~ regarding the complaint process; ~~(3-30-01)( )~~

f. Monitor the case to insure the provider has replied and ~~that~~ correspond in writing to the complainant and the provider ~~are kept informed~~ advising of the ~~case's~~ status ~~of the investigation~~ at least every forty-five (45) to sixty (60) days. ~~(3-30-01)( )~~

g. The QAS may request any additional information deemed necessary to fully investigate the complaint, including but not limited to: (3-15-02)

- i. Interviewing the complainant and the respondent; (3-15-02)
- ii. Requesting additional records, documents, or statements; and (3-15-02)
- iii. Collecting collateral information. (3-15-02)

**013. COMPLAINT AUTHORITY.**

At the time the ~~complaint~~ case is opened, the ~~Quality Assurance Specialist will~~ QAS shall assign a priority rating\* (\*rating may change at any point in the investigation as new information is received) to the investigation according to the following table:

CATEGORY	DESCRIPTION	EXAMPLE
1	Imminent, or current danger to the public.	Impairment by psychiatric or substance abuse problems.
2	Threat to the public, currently monitored or controlled.	Retired, incarcerated, enrolled in recognized treatment program poses no immediate threat to the public.
3	Identified as having practice, skills, or judgment concern considered a potential threat to the public.	Prescribing concerns, isolated incident of error, negligence, or misconduct.
4	Medium to low risk to public.	Improper delegation Disciplinary action in another state
5	Low risk to public.	Paperwork problems Record keeping issues Failure to transfer medical records.

~~(3-30-01)( )~~

01. **Category One.** Cases assigned as Category one (1) ~~requires~~ shall be immediately ~~ly~~ referral reported to the Executive Director for appropriate action. ~~(3-30-01)( )~~

02. **Category Two.** Cases assigned as Category two (2) is shall be reported to the Executive Director for appropriate action. ~~(3-30-01)( )~~

014. -- 019. (RESERVED)



**020. REPORT OF INVESTIGATION.**

~~When~~ Upon receipt of the ~~needed~~ response and documentation ~~is received~~ obtained from the investigation, QAS shall prepare a report containing the following: (3-30-01)(    )

01. **Provider Information.** The name of the provider, ~~city~~ address, specialty, and date ~~of Board meeting~~. (3-30-01)(    )

02. **Previous Complaints.** A summary of previous complaints lodged against the provider. (3-30-01)(    )

03. **Complaint Concerns.** A copy and summary of the complainant's concerns. (3-30-01)(    )

04. **Provider's Response.** A copy and summary of the provider's response. (3-30-01)(    )

05. **QAS Review.** A summary of the QAS review of medical records/documentation. (3-30-01)(    )

06. **Copies of Documents.** Additional ~~C~~copies of ~~the written complaint and response shall be attached to the summary.~~ ~~Other~~ documents may be attached as indicated by the nature of the complaint, response, and summary. (3-30-01)(    )

07. **Summary of Additional Information.** A copy and written summary of any additional interviews or information collected in the course of the investigation. (3-15-02)(    )

**021. TRACKING.**

~~After review by the Committee on Professional Discipline and/or the Board of Medicine, upon review and consideration of the recommendation made by the Committee on Professional Discipline (Committee) or respective Board or Committee, makes a determination upon the merits of the case and may take action to impose sanctions or limitations or conditions on licenses or permits issued:~~ (3-30-01)(    )

01. **Case Is Closed.** If the Board determines to closed ~~by the Board~~, the QAS shall correspond with in writing to the complainant and provider and notifying each of the Board's final determination and action within the bounds of confidentiality subject to federal and state law. (3-30-01)(    )

02. **Further Investigation Is Requested.** If the Board determines further investigation is requested by the Board necessary to fully adjudicate the case, the QAS shall obtain the requested information and prepare a summary as described in Section 020. The complainant and provider shall be notified in writing of the Board determination and the case's status ~~of the complaint~~. (3-30-01)(    )

03. **Consultant Is Requested.** If the Board determines a medical consultant is requested by the Board necessary to fully adjudicate the case, the QAS shall request engage an appropriate medical consultant; to review the recently retired or currently in case and submit a clinical practice similar to the physician under review, to review the information provided and prepare a written report of findings to the Board. Such medical consultant may be recently retired from or currently in a clinical practice similar to the named provider. The Board shall define the focus, scope and depth of the medical consultant's review. The medical consultant shall be: (3-15-02)

a. Board certified; (3-15-02)

b. Free from ~~disqualifying information~~ current Board review such as no open complaints or pending formal action; and (3-15-02)(    )

c. Free from ~~conflict of interest or disqualifying interest and disqualification~~. Medical consultants shall disqualify themselves and, on motion of any interested party may, on proper showing, be disqualified in any proceeding concerning which they have an actual conflict of interest or bias which interferes with their fair and impartial service. (3-15-02)(    )

d. The medical consultant must sign an independence statement before commencing the review.

(3-15-02)( )

~~04. **Records Review Is Requested.** If a records review is requested, the Board will define the focus, scope and depth of the review.~~ (3-30-01)

**054. Stipulation and Order Is Issued.** If the Board determines the case warrants issuance of a stipulation and order ~~is issued~~, a Board attorney shall generate the stipulation and order and submit to the named provider for signature. ~~†~~The QAS will shall complete the stipulation checklist as indicated by the nature of the stipulation, identify the monitoring requirements and establish a monitoring plan for the provider. (3-30-01)( )

**065. Other Disciplinary Action Directed.** If the Board determines other disciplinary actions are ~~directed by the Board~~ warranted, the QAS will shall act under the guidance of the Executive Director and/or Board counsel. (3-30-01)( )

**076. Opportunity to Meet With Committee.** ~~Before~~ The named provider shall be provided an opportunity to meet with the Committee or Board staff prior to the initiation of formal disciplinary proceedings, ~~a person under investigation shall be provided an opportunity to meet with the Committee on Professional Discipline or its staff, at the discretion of the licensee.~~ (3-30-01)( )

**087. Recording of Board Action.** The QAS will shall update the database and the case file to reflect the Board's determination and action on the reviewed cases. (3-30-01)( )

**022. AUTHORITY TO CLOSE COMPLAINTS/CASES.**  
The ~~only individuals~~ Board is solely authorized to close complaints ~~files are the Committee of Professional Discipline and/or the Board of Medicine~~ and cases. All complaints and cases must be presented to the respective Board for consideration and ~~action~~ recommendation to the Board. (3-30-01)( )

**023. OTHER INDICATORS FOR INVESTIGATION.**

**01. Board Investigations.** The Board may ~~initiate~~ commence any investigation on its own initiative or on the basis on performance indicators. (3-15-02)( )

**02. Performance Indicators.** Performance indicators that may be used include, but are not limited to: (3-15-02)

a. Frequent changes in geographical practice location. (3-15-02)

b. Number of inactive licenses held. (3-15-02)

c. Number of malpractice complaints. (3-15-02)

d. Number of complaints lodged with the Board. (3-15-02)( )

e. Failure to receive specialty board certification. (3-15-02)

f. Changes in area/specialty of practice without formal retraining. (3-15-02)

g. Health status. (3-15-02)

h. Age. Illness. Mental or physical illness, including but not limited to, deterioration through the aging process, or loss of motor skill; or excessive use or abuse of drugs, including alcohol. (3-15-02)( )

i. Prescribing practices. (3-15-02)

j. Physicians without hospital privileges or medical practice affiliation who are not routinely subject to peer review. (3-15-02)

- k.** ~~Physician~~ **Provider** performance and outcome data received from sources such as Professional Review Organizations. ~~(3-15-02)~~( )
- l.** Disciplinary reports from managed care organizations. (3-15-02)
- m.** Disciplinary reports by other state and government agencies. ~~(3-15-02)~~( )

## IDAPA 23 - BOARD OF NURSING

### 23.01.01 - RULES OF THE IDAHO BOARD OF NURSING

#### DOCKET NO. 23-0101-1201

#### 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 54-1404, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

During properly noticed public meetings, the BON has adopted the National Council of State Board's of Nursing (NCSBN) Consensus Model for regulation of advanced practice registered nurses (APRN). The Consensus Model mandates specific requirements for licensure and practice regarding such nurses and carries a specific implementation date. Legislation passed by the Idaho Legislature in 2012 (Senate Bill 1273), obligates the BON to specify the details of qualifications for an APRN (that is, the education, training, experience, credentialing, etc.) in BON rule. The legislation largely becomes effective on July 1, 2013. This rulemaking intends to promulgate rules on these issues to become effective along with the legislation on July 1, 2013, and consistent with the NCSBN implementation timeline. This rulemaking will affect the licensure and practice of an APRN by increasing the required educational level for new licensees (and provide a "grandfathering" provision); identifying both an APRN role and population focus of practice; modifying several definitions to reflect these changes; and eliminating a restriction on prescribing or dispensing medications, consistent with a change in a Board of Pharmacy statute.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rulemaking is intended to implement legislation, effective July 1, 2013. The rulemaking will formally put into place mandated licensing and other provisions the Board of Nursing (BON) has already adopted.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sandra Evans, M.A. Ed., R.N., Executive Director at (208) 334-3110 ext. 2476.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 29th day of August, 2012.

Sandra Evans, M.A. Ed., R.N.  
Executive Director  
Board of Nursing  
280 N. 8th St. (8th & Bannock), Ste. 210

P. O. Box 83720  
Boise, ID 83720-0061  
Telephone: (208) 334-3110 ext. 2476.  
Fax: (208) 334-3262

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 23-0101-1201**

**271. DEFINITIONS RELATED TO ADVANCED PRACTICE REGISTERED NURSING.**

- 01. Accountability.** Means being answerable for one's own actions. (7-1-99)
- 02. Advanced Practice Registered Nurse.** Means a registered nurse licensed in this state who has gained additional specialized knowledge, skills and experience through a graduate or post-graduate program of study as defined herein and is authorized to perform advanced nursing practice, which may include acts of diagnosis and treatment, and the prescribing, administering and dispensing of therapeutic pharmacologic and non-pharmacologic agents, as defined herein. Advanced practice registered nurses shall include nurses licensed in the roles of certified nurse-midwives, clinical nurse specialists, certified nurse practitioners, and certified registered nurse anesthetists. Advanced practice registered nurses, when functioning within the recognized scope of practice, assume primary responsibility for the care of their patients in diverse settings. This practice incorporates the use of professional judgment in the assessment and management of wellness and conditions appropriate to the advanced practice registered nurse's role, population focus and area of specialization. (7-1-99)(    )
- 03. Authorized Advanced Practice Registered Nurse.** Means an advanced practice registered nurse authorized by the Board to prescribe and dispense pharmacologic and non-pharmacologic agents pursuant to Section 315 of these rules. (7-1-99)
- 04. Certification.** Means recognition of the applicant's advanced knowledge, skills and abilities in a defined area of nursing practice by a national organization recognized by the Board. The certification process measures the theoretical and clinical content denoted in the advanced scope of practice, and is developed in accordance with generally accepted standards of validation and reliability. (7-1-99)
- 05. Certified Nurse-Midwife.** Means a licensed registered nurse who has graduated from a nationally accredited graduate or post-graduate nurse-midwifery program, passed a qualifying examination recognized by the Board and has current initial certification or current recertification as a nurse-midwife from a national organization recognized by the Board. (7-1-99)(    )
- 06. Certified Nurse Practitioner.** Means a licensed registered nurse who has graduated from a nationally accredited graduate or post-graduate nurse practitioner program and has current certification as a nurse practitioner from a national organization recognized by the Board. (    )
- 07. Certified Registered Nurse Anesthetist.** Means a licensed registered nurse who has graduated from a nationally accredited graduate or post-graduate nurse anesthesia program and has current certification as a nurse anesthetist from a national organization recognized by the Board. (    )
- 068. Clinical Nurse Specialist.** Means a licensed registered nurse who has graduated from a nationally accredited graduate program in nursing with a or post-graduate clinical focus, passed a qualifying examination recognized by the Board nurse specialist program and has current initial certification or current recertification as a clinical nurse specialist from a national organization recognized by the Board. (7-1-99)(    )
- 079. Collaboration.** Means the cooperative working relationship with another health care provider, each contributing his respective expertise in the provision of patient care, and such collaborative practice includes the discussion of patient treatment and cooperation in the management and delivery of health care. (7-1-99)
- 0810. Consultation.** Means conferring with another health care provider for the purpose of obtaining information or advice. (7-1-99)
- 0911. Diagnosis.** Means identification of actual or potential health problems and the need for intervention based on analysis of data collected. Diagnosis depends upon the synthesis of information obtained during the through interview, physical exam, ~~or~~ diagnostic tests or other investigations. (7-1-99)(    )

**102. Intervention.** Means measures to promote health, protect against disease, treat illness in its earliest stages, manage acute and chronic illness, and treat disability. Interventions may include, but are not limited to ordering diagnostic studies, performing direct nursing care, prescribing pharmacologic or non-pharmacologic or other therapies and consultation with or referral to other health care providers. (7-1-99)

~~**11. Nurse Practitioner.** Means a licensed registered nurse who has graduated from a nationally accredited nurse practitioner program, passed a qualifying examination recognized by the Board, and has current initial certification or current recertification as a nurse practitioner from a national organization recognized by the Board. (7-1-99)~~

**123. Peer Review Process.** The systematic process by which ~~one~~ **a qualified peer** assesses, monitors, and makes judgments about the quality of care provided to patients ~~by other peers~~ measured against established practice standards. Peer review: (3-30-07)(    )

- a. Measures on-going practice competency of the advance practice registered nurse (APRN); (3-30-07)
- b. Is performed by a licensed APRN, physician, ~~PA~~ **physician assistant**, or other professional certified by a recognized credentialing organization; and (3-30-07)(    )
- c. Focuses on a mutual desire for quality of care and professional growth incorporating attitudes of mutual trust and motivation. (3-30-07)

**14. Population Focus.** Means the section of the population which the APRN has targeted to practice within. The categories of population foci are: (    )

- a. Family/individual across the lifespan; (    )
- b. Adult-gerontology; (    )
- c. Women's health/gender-related; (    )
- d. Neonatal; (    )
- e. Pediatrics; and (    )
- f. Psychiatric-mental health. (    )

**135. Prescriptive and Dispensing Authorization.** Means the legal permission to prescribe, deliver, distribute and dispense pharmacologic and non-pharmacologic agents to a client in compliance with Board rules and applicable federal and state laws. Pharmacologic agents include legend and Schedule II through V controlled substances. (7-1-99)

**146. Referral.** Means directing a client to a physician or other health professional or resource. (7-1-99)

~~**15. Certified Registered Nurse Anesthetist.** Means a licensed registered nurse who has graduated from a nationally accredited nurse anesthesia program, passed a qualifying examination recognized by the Board and has current initial certification or current recertification as a nurse anesthetist from a national organization recognized by the Board. (7-1-99)~~

**167. Scope of Practice of Advanced Practice Registered Nurse.** Means those activities that the advanced practice registered nurse may perform. Those activities shall be defined by the Board according to the advanced practice registered nurse's education, preparation, experience and the parameters set forth by the advanced practice registered nurse's recognized, national certifying organization. (7-1-99)

**178. Specialization.** Means ~~focusing the advanced~~ **a more focused area of preparation and** practice ~~registered nurse's clinical area~~ **than that** of ~~practice, including but not limited to, family health, mental health, child~~

~~health, gerontological health, adult health or other~~ the APRN role/population foci that is built on established criteria for recognition as a nursing specialty to include, but not limited to, specific patient populations (e.g., elder care, care of post-menopausal women), and specific health care needs (e.g., palliative care, pain management, nephrology).  
(7-1-99)( )

272. -- 279. (RESERVED)

280. STANDARDS OF PRACTICE FOR ADVANCED PRACTICE REGISTERED NURSING.

01. Purpose. (7-1-99)

- a. To establish standards essential for safe practice by the advanced practice registered nurse; and (7-1-99)
- b. To serve as a guide for evaluation of advanced practice registered nursing to determine if it is safe and effective. (7-1-99)

02. Core Standards for All ~~Categories~~ Roles of Advanced Practice Registered Nursing. The advanced practice registered nurse is a licensed independent practitioner who shall practice ~~in a manner~~ consistent with the definition of advanced practice registered nursing, recognized national standards and the standards set forth in these rules. ( )

a. The advanced practice registered nurse ~~may~~ shall provide client services for which the advanced practice registered nurse is educationally prepared and for which competence has been ~~attained~~ achieved and maintained. (7-1-99)( )

~~a. The advanced practice registered nurse shall consult and collaborate with other members of the health care team.~~ (7-1-99)

b. The advanced practice registered nurse shall recognize his limits of knowledge and experience and shall consult and collaborate with and refer to other health care professionals as appropriate. (7-1-99)

~~c. The advanced practice registered nurse shall retain professional accountability for advanced practice registered nursing care according to the advanced practice registered nurse's scope of practice and Subsections 400.01 and 400.02 of these rules.~~ (7-1-99)

~~d.~~ d. The advanced practice registered nurse shall evaluate and apply current evidence-based research findings relevant to the advanced nursing practice ~~category~~ role. (7-1-99)( )

~~e.~~ e. The advanced practice registered nurse shall ~~assess clients, identify problems or conditions, establish diagnoses, develop~~ assume responsibility and ~~implement treatment plans~~ accountability for health promotion and ~~evaluate patient outcomes~~ maintenance as well as the assessment, diagnosis and management of client conditions to include the use of pharmacologic and non-pharmacologic interventions and the prescribing and dispensing of pharmacologic and non-pharmacologic agents. (7-1-99)( )

~~f.~~ f. The advanced practice registered nurse shall use advanced practice knowledge and skills in teaching and guiding clients and other health care team members. (7-1-99)( )

~~g.~~ g. ~~The advanced practice registered nurse shall use critical thinking and independent decision-making, commensurate with the autonomy, authority and responsibility of the practice category.~~ (7-1-99)

~~h.~~ h. The advanced practice registered nurse shall have knowledge of the statutes and rules governing advanced nursing practice, and ~~function~~ shall practice within the established ~~boundaries of~~ standards for the ~~appropriate~~ advanced nursing practice ~~category~~ role and population focus. (7-1-99)( )

g. ~~The advanced practice registered nurse shall practice consistent with Subsections 400.01 and 400.02 of these rules.~~ ( )

**03. Certified Nurse-Midwife.** In addition to the core standards, the advanced practice registered nurses in the category role of certified nurse midwife ~~shall practice in accord with standards established by~~ provides the ~~American College~~ full range of ~~Nurse Midwives Certifying Council or the American College of Nurse-Midwives.~~ Certified nurse-midwives who meet qualifying requirements and are licensed by the Board, may manage women's primary health care focusing on pregnancy, childbirth, the post-partum period, care of the newborn and reproductive and gynecological needs of well services to women as defined by throughout the certified nurse-midwife's scope of practice. The scope of practice of an authorized certified nurse-midwife may include prescribing lifespan, including gynecologic care, family planning services, preconception care, prenatal and dispensing pharmacologic postpartum care, childbirth, care of the newborn and non-pharmacologic agents reproductive health care treatment of the male partners of female clients. (4-6-05)(\_\_\_\_)

**04. Clinical Nurse Specialist.** In addition to ~~the~~ core standards, the advanced practice registered nurses in the category role of clinical nurse specialist ~~shall practice in accord with standards established by the American Nurses Credentialing Center. Clinical nurse specialists who meet qualifying requirements~~ provides services to patients, care providers and are licensed by the Board, may practice as expert clinicians in a particular specialty or subspecialty of nursing practice. The clinical nurse specialist provides health care delivery systems including, but not limited to, direct client care, which may include assessing, diagnosing, planning, health promotion and preventive expert consultation, care within this specialized area of practice, as defined by the clinical nurse specialist's scope of practice. The scope of practice of an authorized clinical nurse specialist may include the prescribing and dispensing of pharmacologic coordination, monitoring for quality indicators and non-pharmacologic agents facilitating communication between patients, their families, members of the health care team and components of the health care delivery system. (4-6-05)(\_\_\_\_)

**05. Certified Nurse Practitioner.** In addition to ~~the~~ core standards, the advanced practice registered nurses in the category role of certified nurse practitioner ~~shall practice in accord with standards established by the American Nurses Credentialing Center, the American Academy of Nurse Practitioners, the National Association of Pediatric Nurse Associates~~ provides initial and ~~Practitioners or the Association of Women's Health Obstetrics and Neonatal Nurses.~~ Certified nurse practitioners who meet qualifying requirements and are licensed by the Board may perform ongoing comprehensive health assessments, primary care services to clients including, but not limited to, diagnosis, health promotion and the direct management of acute and chronic illness and disease, as defined by the certified nurse practitioner's scope of practice. The scope of practice of an authorized certified nurse practitioner may include the prescribing and dispensing of pharmacologic and non-pharmacologic agents health promotion, disease prevention, health education counseling, and identification and management of the effects of illness on clients and their families. (4-6-05)(\_\_\_\_)

**06. Certified Registered Nurse Anesthetist.** In addition to ~~the~~ core standards, the advanced practice registered nurses in the category role of certified registered nurse anesthetist ~~shall practice in accord with standards established by the Council on Certification of Nurse Anesthetists or the Council on Recertification of Nurse Anesthetists. Certified registered nurse anesthetists who meet qualifying requirements and are licensed by the Board, may, in collaboration with a physician, dentist or podiatrist authorized to practice in Idaho,~~ provides the full spectrum of anesthesia care and anesthesia-related care and services including selecting, ordering and administering medications as defined by national standards approved by to individuals across the Board. The scope of practice for authorized certified registered nurse anesthetists lifespan whose health status may include range across the prescribing wellness-illness continuum to include healthy persons; persons with immediate, severe or life-threatening illness or injury; and dispensing of pharmacologic agents persons with sustained or chronic health conditions. (7-1-99)(\_\_\_\_)

**07. Documentation of Specialization.** Unless exempted under Section 305 of these rules, ~~The~~ advanced practice registered nurse must document competency within his specialty area of practice based upon education, experience and national certification in the specialty role and population focus. ~~Nurse practitioners authorized to practice prior to July 1, 1998, must document competency within the specialty area of practice based upon education, experience and national certification in that specialty or education, experience and approval by the Board.~~ (7-1-99)(\_\_\_\_)

281. -- 284. (RESERVED)



**285. QUALIFICATIONS FOR ADVANCED PRACTICE REGISTERED NURSE.**

*An applicant for licensure as an advanced practice registered nurse shall meet the following requirements: (7-1-99)*

~~01. Certified Nurse-Midwife Qualifications.~~ To qualify as ~~a certified~~ an advanced practice registered nurse-midwife, an applicant shall provide evidence of: (7-1-99)(    )

~~a01. Current Licensure.~~ Current licensure to practice as a registered nurse in Idaho; (7-1-99)(    )

~~b02. Completion of Advanced Practice Registered Nurse Program.~~ Successful completion of a graduate or post-graduate advanced practice registered nurse-midwifery program which is accredited by a national organization recognized by the Board; and (7-1-99)(    )

~~e. Passing results on the certification examination administered by the American College of Nurse-Midwives; and~~ (7-1-99)

~~a03. National Certification.~~ Current national certification ~~as a nurse-midwife from the American College of Nurse-Midwives~~ by an organization recognized by the Board for the specified APRN role. (7-1-99)(    )

~~02. Clinical Nurse Specialist Qualifications.~~ To qualify as a clinical nurse specialist, an applicant shall provide evidence of: (7-1-99)

~~a. Current licensure to practice as a registered nurse in Idaho;~~ (7-1-99)

~~b. A master's or higher degree in nursing with clinical specialization from a program accredited by a national organization recognized by the Board;~~ (7-1-99)

~~c. Passing results on a certification examination administered by an organization recognized by the Board; and~~ (7-1-99)

~~d. Current national certification as a clinical nurse specialist in the designated nursing specialty from an organization recognized by the Board.~~ (7-1-99)

~~03. Certified Nurse Practitioner Qualifications.~~ To qualify as a certified nurse practitioner, an applicant shall provide evidence of: (7-1-99)

~~a. Current licensure to practice as a registered nurse in Idaho;~~ (7-1-99)

~~b. Successful completion of a nurse practitioner program which is accredited by a national organization recognized by the Board;~~ (7-1-99)

~~c. Passing results on the certification examination administered by an organization recognized by the Board; and~~ (7-1-99)

~~d. Current national certification as a nurse practitioner from an organization recognized by the Board.~~ (7-1-99)

~~04. Certified Registered Nurse Anesthetist Qualifications.~~ To qualify as a certified registered nurse anesthetist, an applicant shall provide evidence of: (7-1-99)

~~a. Current licensure to practice as a registered nurse in Idaho;~~ (7-1-99)

~~b. Successful completion of a nurse anesthetist program accredited by a national organization recognized by the Board;~~ (7-1-99)

~~c. Passing results on the certification examination administered by the Council on Certification of Nurse Anesthetists; and~~ (7-1-99)

~~d. Current national certification as a nurse anesthetist from the Council on Certification of Nurse Anesthetists, or current national recertification from the Council on Recertification of Nurse Anesthetists. (7-1-99)~~

**286. -- 289. (RESERVED)**

**290. APPLICATION FOR LICENSURE -- ADVANCED PRACTICE REGISTERED NURSE.**

The advanced practice registered nurse requesting licensure to practice as a certified nurse-midwife, clinical nurse specialist, certified nurse practitioner or certified registered nurse anesthetist must submit an application to the Board which includes: (7-1-99)

**01. Application Form.** Completed, notarized application form provided by the Board. (7-1-99)

**02. Official Transcript.** Official transcript ~~from the~~ verifying successful completion of a graduate or post-graduate advanced practice nursing education program ~~verifying successful completion~~ nationally accredited by an organization recognized by the Board. (7-1-99)(    )

**03. National Certification.** Verification of current national certification from ~~the~~ a Board-recognized APRN certifying ~~agent, and~~ organization. (7-1-99)(    )

~~04. Enrollment in Continuing Competency Assessment Program. In addition to verification of national certification, a certified nurse-midwife must submit proof of enrollment in the continuing competency assessment program of the American College of Nurse-Midwives which bears a current expiration date. At the end of five (5) years, the certified nurse-midwife must submit evidence of completion of the continuing competency requirement of the program. (7-1-99)~~

~~054. Fee.~~ The fee ~~prescribed~~ specified in ~~Sub~~section 901-02 of these rules. (3-30-07)(    )

~~065. Criminal Background Check.~~ A current fingerprint based criminal history check as set forth in Section 54-1401(3), Idaho Code. (4-6-05)

**291. -- 294. (RESERVED)**

**295. TEMPORARY LICENSURE -- ADVANCED PRACTICE REGISTERED NURSE.**

A temporary license to engage in advanced practice registered nursing ~~as a certified nurse-midwife, clinical nurse specialist, nurse practitioner, or registered nurse anesthetist~~ may be issued to the following: (7-1-99)(    )

**01. Applicants Awaiting Initial Certification Examination Results.** An otherwise qualified applicant who is eligible to take the first available certification examination following completion of an approved advanced practice registered nurse education program. Verification of registration to write a Board-recognized national certification examination must be received from the national certifying organization. (7-1-99)

**a.** Temporary licensure to practice shall be deemed to expire upon failure of the certification examination. An applicant who fails the national certification exam shall not engage in advanced practice registered nursing until such time as all requirements are met. (7-1-99)

**b.** An applicant who is granted a temporary license to practice as an advanced practice registered nurse must submit notarized results of the certification examination within ten (10) days of receipt. Failure to submit required documentation shall result in the immediate expiration of the temporary license. (7-1-99)

**c.** The temporary license of an applicant who does not write the examination on the date scheduled shall immediately expire and the applicant shall not engage in advanced practice registered nursing until such time as all requirements are met. (7-1-99)

**02. Applicants Whose Certification Has Lapsed.** A licensed registered nurse applying for re-entry into advanced practice registered nursing practice, who is required by the national certifying organization to meet certain specified practice requirements under supervision. The length of and conditions for temporary licensure shall be determined by the Board. (7-1-99)

**03. Applicants Holding a Temporary Registered Nursing License.** An advanced practice registered nurse currently authorized to practice advanced practice registered nursing in another ~~state~~ nursing jurisdiction upon issuance of a temporary license to practice as a registered nurse, and upon evidence of current ~~initial~~ certification or recertification as an advanced practice registered nurse from a Board-recognized national certifying organization. (7-1-99)(    )

**04. Applicants Without Required Practice Hours.** An advanced practice registered nurse who has not practiced the minimum required period of time during the renewal period may be issued a temporary license in order to acquire the required number of hours and demonstrate ability to safely practice. (7-1-99)

**05. Application Processing.** An APRN whose application has been received but is not yet complete may be issued a temporary license. (3-30-07)

**06. Term of Temporary License.** A temporary license expires at the conclusion of the term for which it is issued, or the issuance of a renewable license, whichever occurs earlier. (3-30-07)

**296. -- 299. (RESERVED)**

**300. RENEWAL ~~AND REINSTATEMENT~~ OF ADVANCED PRACTICE REGISTERED NURSE LICENSE.**

The advanced practice registered nurse license may be renewed every two (2) years as ~~prescribed~~ specified in ~~the~~ Section 54-1411, Idaho Code, provided that the advanced practice registered nurse: (7-1-99)(    )

**01. Current Registered Nurse License.** Maintains a current registered nurse license, or privilege, to practice in Idaho. (3-15-02)(    )

**02. Evidence of Certification.** Submits evidence of current APRN certification by a national organization recognized by the Board. (7-1-99)(    )

**03. Evidence of Continuing Education.** Provides documentation of thirty (30) contact hours of continuing education during the renewal period, which shall include ten (10) contact hours in pharmacology if the nurse has prescriptive authority. Continuing education completed may be that required for renewal of national certification if documentation is submitted confirming the certifying organization's requirement is for at least thirty (30) contact hours. ~~These contact hours may include the requirements identified in Paragraph 315.02.b. of these rules in a two (2) year period.~~ (7-1-99)(    )

**04. Hours of Practice.** Attests, on forms provided by the Board, to a minimum of two hundred (200) hours of advanced registered nursing practice within the preceding two (2) year period. (7-1-99)

**05. Fee.** Pays the fee prescribed specified in ~~Subsection 900.05~~ of these rules. (3-30-07)(    )

~~**06. Criminal Background Check.** Submits a current fingerprint-based criminal history check as set forth in Section 54-1401(3), Idaho Code. (4-6-05)~~

~~**07. Peer Review Process.** Provides evidence, satisfactory to the Board, of completion of participation in a peer review process acceptable to the Board. Applies to: (4-6-05)(    )~~

~~**a. CNM, Certified Nurse-Midwife;** (4-6-05)~~

~~**b. CNS, Clinical Nurse Specialist; and** (4-6-05)~~

~~**c. CNP, Certified Nurse Practitioner.** (4-6-05)~~

**08. Exemption From Requirements.** Nurse practitioners not certified by a national organization recognized by the Board and approved prior to July 1, 1998 shall be exempt from the requirement set forth in Subsection 300.02 of these rules. (7-1-99)

**301. REINSTATEMENT OF ADVANCED PRACTICE REGISTERED NURSE LICENSE.**

An advanced practice registered nurse license may be reinstated as specified in Section 54-1411, Idaho Code, provided that the applicant: ( )

**01. Current Registered Nurse License.** Maintains a current registered nurse license or privilege to practice in Idaho. ( )

**02. Evidence of Certification.** Submits evidence of current APRN certification by a national organization recognized by the Board. ( )

**03. Prior Board Order.** Complies with the provisions of any Board order, if discipline had previously been imposed. ( )

**04. Fee.** Pays the fee specified in Section 900 of these rules. ( )

**05. Criminal Background Check.** Submits a current fingerprint based criminal history check as set forth in Section 54-1401(3), Idaho Code. ( )

**06. Reinstatement Rules.** Complies with any additional requirements for reinstatement under the applicable provisions of Sections 061 and 062 of these rules. ( )

~~304.2.~~ -- 304. (RESERVED)

**305. PERSONS EXEMPTED FROM ADVANCED PRACTICE REGISTERED NURSING LICENSE REQUIREMENTS.**

**01. Students.** Nothing in these rules shall prohibit a registered nurse who holds a current license, or privilege, to practice in Idaho and who is enrolled as a matriculated student in a ~~nationally accredited~~ educational program for advanced practice registered nursing from practicing as an advanced practice registered nurse when such practice is an integral part of the advanced practice registered nurse curriculum. (3-15-02)( )

**02. Certified Nurse Practitioners Licensed Prior to July 1, 1998.** A certified nurse practitioner authorized to practice prior to July 1, 1998 may satisfy the requirement of Section 280.07 of these rules by documenting competency within his specialty area of practice based upon education, experience and national certification in that specialty or education, experience and approval by the Board. ( )

**03. Advanced Practice Registered Nurses Educated Prior to January 1, 2016.** ( )

**a.** An applicant for APRN licensure who completed a nationally accredited undergraduate or certificate APRN program prior to January 1, 2016, does not need to meet the APRN graduate or post-graduate educational requirements for initial licensure contained within Section 285 of these rules. ( )

**b.** A person applying for APRN licensure in Idaho who: (1) holds an existing APRN license issued by any nursing jurisdiction, (2) completed his formal APRN education prior to January 1, 2016, and (3) who meets all of the requirements for initial licensure contained within Sections 285 and 286 of these rules except for the APRN graduate or post-graduate educational requirement, may be issued an APRN license by endorsement if at the time the person received his APRN license in the other jurisdiction he would have been eligible for licensure as an APRN in Idaho. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**315. PRESCRIPTIVE AND DISPENSING AUTHORIZATION FOR ADVANCED PRACTICE REGISTERED NURSES.**

**01. Initial Authorization.** An application for the authority to prescribe and dispense pharmacologic and non-pharmacologic agents may be made as part of initial licensure application or by separate application at a later date. Advanced practice registered nurses who complete their APRN graduate or post-graduate educational program after December 31, 2015, will automatically be granted prescriptive and dispensing authority with the issuance of their Idaho license. (7-1-99)( )

**a.** An advanced practice registered nurse who applies for authorization to prescribe pharmacologic and non-pharmacologic agents within the scope of practice for the advanced practice ~~category~~ role, shall: (7-1-99)( )

i. Be currently licensed as an advanced practice registered nurse in Idaho; (7-1-99)

ii. Provide evidence of completion of thirty (30) contact hours of post-basic education in pharmacotherapeutics obtained as part of study within a formal educational program or continuing education program, ~~which are~~ related to ~~the applicant's~~ advanced nursing practice, ~~category scope of practice and include:~~ (7-1-99)( )

~~(1) Pharmacokinetic principles and their clinical application;~~ (7-1-99)

~~(2) The use of pharmacologic agents in the prevention of illness, restoration, and maintenance of health;~~ (7-1-99)

~~(3) Federal and state laws relating to the purchasing, possessing, prescribing, administering, and disposing of pharmacologic and non-pharmacologic agents;~~ (7-1-99)

~~(4) Prescription writing;~~ (7-1-99)

~~(5) Drug selection, dosage and route of administration; and~~ (7-1-99)

~~(6) Drug interactions.~~ (7-1-99)

iii. Submit a completed, notarized application form provided by the Board; and (7-1-99)

iv. Remit fees prescribed in ~~Subsection 901.05~~ of these rules. (3-30-07)( )

**b.** Exceptions to the pharmacotherapeutic education may be approved by the Board. (7-1-99)

**c.** Prescriptions written by authorized advanced practice registered nurses shall comply with all applicable state and federal laws and be signed by the prescriber with the abbreviation for the applicable category role of advanced nursing practice, the identification number assigned by the Board and where applicable, the Idaho Board of Pharmacy controlled substance registration number and the federal Drug Enforcement Agency registration number. (7-1-99)( )

~~**d.** Advanced practice registered nurse authorization shall expire and may be renewed at the same time as the advanced practice registered nurse license.~~ (7-1-99)

~~**02. Authorization Renewal.** Authorization may be renewed provided the applicant:~~ (7-1-99)

~~**a.** Maintains a valid advanced practice registered nurse license;~~ (7-1-99)

~~**b.** Has completed ten (10) contact hours of approved pharmacology-related continuing education in the twenty four (24) months immediately preceding application for renewal; and~~ (7-1-99)

~~**c.** Has not engaged in any act or omission in the exercise of prescriptive authority which demonstrates a threat to the public.~~ (7-1-99)

**032. Temporary Authorization.** The Board may grant temporary prescriptive authority to an applicant who holds a temporary advanced practice registered nurse license and who meets the requirements for initial authorization pursuant to Subsection 315.01 of these rules. (7-1-99)

**043. Expiration of Temporary Prescriptive Authorization.** Temporary prescriptive authorization automatically expires on the expiration, revocation, suspension, placement on probation, or denial of any advanced practice registered nurse license. (7-1-99)

**054. Prescribing and Dispensing Authorization.** All authorized advanced practice registered nurses may prescribe and dispense pharmacologic and non-pharmacologic agents pursuant to applicable state and federal laws, ~~subject to the following conditions:~~ (7-1-99)( )

**055. Valid Advanced Practice Registered Nurse/Patient Relationships.** ( )

**a.** An advanced practice registered nurse shall not dispense pharmacologic agents except in the course of his professional practice and when a bona fide advanced practice registered nurse/patient relationship has been established. A valid relationship will exist when the advanced practice registered nurse has obtained sufficient knowledge of the patient's medical condition through examination and has assumed responsibility for the health care of the patient. (7-1-99)( )

**b.** ~~Restrictions on the Dispensing of Controlled Substances: A valid advanced practice registered nurse/patient relationship is not required when~~ Dispensing of Schedule II controlled substances shall be limited to emergency periods to be determined on the basis of individual or prescribing medications under the circumstances set forth at Section 54-1733(4), Idaho Code. ~~The emergency period will extend only until the Schedule II prescription can be filled from a pharmacy.~~ (7-1-99)( )

~~06. Accountability. The advanced practice registered nurse when exercising prescriptive and dispensing authority is accountable for:~~ (7-1-99)

- ~~a. Patient selection;~~ (7-1-99)
- ~~b. Problem identification through appropriate assessment;~~ (7-1-99)
- ~~c. Medication and device selection;~~ (7-1-99)
- ~~d. Patient education for use of therapeutics;~~ (7-1-99)
- ~~e. Knowledge of interactions of therapeutics;~~ (7-1-99)
- ~~f. Evaluation of outcome; and~~ (7-1-99)
- ~~g. Recognition and management of complications and untoward reactions.~~ (7-1-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

~~317. SUMMARY SUSPENSION OF ADVANCED PRACTICE REGISTERED NURSE PRESCRIPTIVE AUTHORIZATION.~~

~~Failure to maintain active licensure as an advanced practice registered nurse shall result in the summary suspension of prescriptive authorization.~~ (3-30-07)

~~318~~7. -- 319. (RESERVED)

**320. RECOGNITION OF NATIONAL CERTIFYING ORGANIZATIONS FOR ADVANCED PRACTICE REGISTERED NURSING.**

~~01. **Recognition of Certification.** The Board recognizes advanced practice registered nurse certification by the Council on Certification of Nurse Anesthetists, the Council on Recertification of Nurse Anesthetists, the American College of Nurse-Midwives Certification Council (or the American College of Nurse-Midwives), the American Nurses Credentialing Center, the National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties, the National Certification Board of Pediatric Nurse Practitioners and Nurses, and the American Academy of Nurse Practitioners organizations that meet criteria as defined by the National Council of State Boards of Nursing. (7-1-99)(    )~~

~~02. **Continuing Recognition.** The Board may review and evaluate the certification process of Board-recognized national certifying agents for continuing recognition. (7-1-99)~~

~~03. **Discontinuance of Recognition.** The Board may discontinue recognition of certifying agents should the Board determine that a certifying agent's certification process does not provide an accurate evaluation of the individual's ability to engage in the safe practice of advanced practice registered nursing. (7-1-99)~~

~~04. **Review of Standards.** The Board may review and evaluate standards for advanced practice registered nursing established by recognized national certifying organizations. (7-1-99)~~

~~05. **Recognition Criteria.** The Board may consider recognition of national certifying organizations according to the following criteria: (7-1-99)~~

~~a. The national certifying body; (7-1-99)~~

~~i. Is national in the scope of its credentialing; (7-1-99)~~

~~ii. Has no requirement for an applicant to be a member of any organization; (7-1-99)~~

~~iii. Has educational requirements which are consistent with the requirements of these rules; (7-1-99)~~

~~iv. Has an application process and credential review which includes documentation that the applicant's education is in the advanced nursing practice category being certified, and that the applicant's clinical practice is in the certification category; (7-1-99)~~

~~v. Uses an examination as a basis for certification in the advanced nursing practice category which meets the following criteria: (7-1-99)~~

~~(1) The examination is based upon job analysis studies conducted using standard methodologies acceptable to the testing community; (7-1-99)~~

~~(2) The examination represents entry level practice in the advanced nursing practice category; (7-1-99)~~

~~(3) The examination represents the knowledge, skills and abilities essential for the delivery of safe and effective advanced nursing care to the clients; (7-1-99)~~

~~(4) The examination content and its distribution are specified in a test plan, based on the job analysis study, that is available to examinees; (7-1-99)~~

~~(5) Examination items are reviewed for content validity, cultural sensitivity and correct scoring using an established mechanism, both before use and periodically; (7-1-99)~~

~~(6) Examination items are evaluated for psychometric performance; (7-1-99)~~

~~(7) The passing standard is established using acceptable psychometric methods, and is re-evaluated periodically; and (7-1-99)~~

- ~~(8) Examination security is maintained through established procedures. (7-1-99)~~
- ~~vi. Issues certification based upon passing the examination and meeting all other certification requirements. (7-1-99)~~
- ~~vii. Provides for periodic re-certification which includes review of qualifications and continued competence. (7-1-99)~~
- ~~viii. Has mechanisms in place for communication to the Board for timely verification of an individual's certification status, changes in certification status, and changes in the certification program, including qualifications, test plan and scope of practice; and (7-1-99)~~
- ~~ix. Has an evaluation process to provide quality assurance in its certification program. (7-1-99)~~

**321. -- 389. (RESERVED)**

**390. USE OF TITLES, ABBREVIATIONS, AND DESIGNATIONS FOR THE PRACTICE OF NURSING.**

**01. Title for Graduates.** A new graduate issued a temporary license pursuant to Section 040 of these rules shall use the title graduate nurse, abbreviated G.N., or graduate practical nurse, abbreviated G.P.N., or graduate nurse midwife, abbreviated G.N.M., or graduate clinical nurse specialist, abbreviated G.C.N.S., or graduate nurse practitioner, abbreviated G.N.P., or graduate nurse anesthetist, abbreviated G.N.A., whichever is appropriate, until the renewable license is issued. (3-30-07)

**02. Titles.** An individual who has successfully met all requirements for licensure as an advanced practice registered nurse shall have the right to use the title corresponding to the *category role* of advanced nursing practice for which the individual is licensed. (7-1-99)( )

**a.** Title of Certified Nurse-Midwife. Individuals who have successfully met all requirements for licensure as a certified nurse-midwife shall have the right to use the title certified nurse-midwife, abbreviated APRN, CNM. (7-1-99)( )

**b.** Title of Clinical Nurse Specialist. Individuals who have successfully met all requirements for licensure as a clinical nurse specialist shall have the right to use the title clinical nurse specialist, abbreviated APRN, CNS. (7-1-99)( )

**c.** Title of Certified Nurse Practitioner. Individuals who have successfully met all requirements for licensure as a certified nurse practitioner shall have the right to use the title certified nurse practitioner, abbreviated APRN, CNP. (7-1-99)( )

**d.** Title of Certified Registered Nurse Anesthetist. Individuals who have successfully met all requirements for licensure as a certified registered nurse anesthetist shall have the right to use the title certified registered nurse anesthetist, abbreviated APRN, CRNA. (7-1-99)( )

**03. Registered Nurse Title.** Individuals who have successfully met all requirements for licensure as registered nurse~~s~~ shall have the right to use the title Registered Nurse, abbreviated R.N. (5-21-79)( )

**04. Licensed Practical Nurse Title.** Individuals who have successfully met all requirements for licensure as a practical nurse~~s~~ shall have the right to use the title Licensed Practical Nurse, abbreviated L.P.N. (5-21-79)( )



## IDAPA 23 - BOARD OF NURSING

### 23.01.01 - RULES OF THE IDAHO BOARD OF NURSING

#### DOCKET NO. 23-0101-1202

#### 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 54-1404, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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 rulemaking is necessary to correct inaccurate citations; to update the rules to incorporate changes to Uniform Licensing Requirements promulgated by the National Council of State Boards that have been adopted by the Board; and to clarify several Board rules. This rulemaking will correct inaccurate citations to both a Board statute and rule; eliminate an unnecessary restriction in a definition; add a definition; eliminate an antiquated exemption applicable to taking the licensing examination; clarify an English proficiency requirement; and simplify other wording to obtain clarity.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the portion of this rulemaking that addresses proficiency by license applicants in English is mandated by Uniform Licensing Requirements (ULR) for nurses already endorsed and adopted by the Board of Nursing in noticed public meetings. This part of the rulemaking is simply formalizing in rule those requirements. The rest of the rulemaking is essentially "housekeeping" or simple in nature in that it corrects typographical or citation errors, changes a couple of definitions to conform to statute, and makes other minor non-controversial changes.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sandra Evans, M.A. Ed., R.N., Executive Director at (208) 334-3110 ext. 2476.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 29th day of August, 2012.

Sandra Evans, M.A. Ed., R.N.  
Executive Director  
Board of Nursing  
280 N. 8<sup>th</sup> St. (8<sup>th</sup> & Bannock), Ste. 210  
P. O. Box 83720  
Boise, ID 83720-0061  
Telephone: (208) 334-3110 ext. 2476.  
Fax: (208) 334-3262

**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 23-0101-1202**

**000. LEGAL AUTHORITY.**

This chapter is adopted in accordance with Section 54-1404(1~~3~~), Idaho Code.

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

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS.**

**01. Abandonment.** The termination of a nurse/patient relationship without first making appropriate arrangements for continuation of required nursing care. The nurse/patient relationship begins when responsibility for nursing care of a patient is accepted by the nurse. Refusal to accept an employment assignment or refusal to accept or begin a nurse/patient relationship is not abandonment. Reasonable notification, or a timely request for alternative care for a patient, directed to ~~an attending physician~~ **a qualified provider** or to a staff supervisor, prior to leaving the assignment, constitutes termination of the nurse/patient relationship. ~~(3-30-07)~~(\_\_\_\_)

**02. Accreditation.** The official authorization or status granted by a recognized accrediting entity or agency other than a state board of nursing. (7-1-93)

**03. Administration of Medications.** The process whereby a prescribed medication is given to a patient by one (1) of several routes. Administration of medication is a complex nursing responsibility which requires a knowledge of anatomy, physiology, pathophysiology, and pharmacology. Only persons authorized under Board statutes and these rules may administer medications and treatments as prescribed by health care providers authorized to prescribe medications. (4-7-11)

**04. Approval.** The process by which the Board evaluates and grants official recognition to education programs that meet standards established by the Board. (5-3-03)

**05. Assist.** To aid or help in the accomplishment of a prescribed set of actions. (7-1-93)

**06. Assistance With Medications.** The process whereby a non-licensed care provider is delegated tasks by a licensed nurse to aid a patient who cannot independently self-administer medications. (5-3-03)

**07. Board.** The Idaho Board of Nursing. (7-1-93)

**08. Board Staff.** The executive director and other such personnel as are needed to implement the Nursing Practice Act and these rules. (7-1-93)

**09. Charge Nurse.** A licensed nurse who bears primary responsibility for assessing, planning, prioritizing and evaluating care for the patients on a unit, as well as the overall supervision of the licensed and unlicensed staff delivering the nursing care. (5-3-03)

**10. Clinical Preceptor.** A licensed registered nurse who acts to facilitate student training in a manner prescribed by a written agreement between the preceptor's employer and an educational institution. (5-3-03)

**11. Competence.** Safely performing those functions within the role of the licensee in a manner that demonstrates essential knowledge, judgment and skills. (5-3-03)

**12. Curriculum.** The systematic arrangement of learning experiences including didactic courses, practical experiences, and other activities needed to meet the requirements of the nursing program and of the certificate or degree conferred by the parent institution. (5-3-03)

- 13. Delegation.** The process by which a licensed nurse assigns tasks to be performed by others. (5-3-03)
- 14. Disability.** Any physical, mental, or emotional condition that interferes with the nurse's ability to practice nursing safely and competently. (5-3-03)
- 15. Emeritus License.** A license issued to a nurse who desires to retire from active practice for any length of time. (5-3-03)
- 16. Licensing Examination.** A licensing examination that is acceptable to the Board. (5-3-03)
- 17. License in Good Standing.** A license not subject to current disciplinary action, restriction, probation or investigation in any jurisdiction. (5-3-03)
- 18. Limited License.** A nursing license subject to specific restrictions, terms, and conditions. (5-3-03)
- 19. Nursing Assessment.** The systematic collection of data related to the patient's health care needs. (5-3-03)
- 20. Nursing Diagnosis.** The clinical judgment or conclusion regarding patient/client/family/community response to actual or potential health problems made as a result of the nursing assessment. (7-1-93)
- 21. Nursing Intervention.** An action deliberately selected and performed to support the plan of care. (5-3-03)
- 22. Nursing Jurisdiction.** Unless the context clearly denotes a different meaning, when used in these rules, the term nursing jurisdiction shall mean any or all of the fifty (50) states, U.S. territories or commonwealths, as the case may be. ( )
- 223. Nursing Service Administrator.** A licensed registered nurse who has administrative responsibility for the nursing services provided in a health care setting. (7-1-93)
- 234. Organized Program of Study.** A written plan of instruction to include course objectives and content, teaching strategies, provisions for supervised clinical practice, evaluation methods, length and hours of course, and faculty qualifications. (7-1-93)
- 245. Patient.** An individual or a group of individuals who are the beneficiaries of nursing services in any setting and may include client, resident, family, community. (5-3-03)
- 256. Patient Education.** The act of teaching patients and their families, for the purpose of improving or maintaining an individual's health status. (5-3-03)
- 267. Plan of Care.** The goal-oriented strategy developed to assist individuals or groups to achieve optimal health potential. (5-3-03)
- 278. Practice Standards.** General guidelines that identify roles and responsibilities for a particular category of licensure and, used in conjunction with the decision-making model, define a nurse's relationship with other care providers. (5-3-03)
- 289. Probation.** A period of time set forth in an order in which certain restrictions, conditions or limitations are imposed on a licensee. (5-3-03)
- 2930. Protocols.** Written standards that define or specify performance expectations, objectives, and criteria. (5-3-03)
- 301. Revocation.** Termination of the authorization to practice. (5-3-03)

**342. Scope of Practice.** The extent of treatment, activity, influence, or range of actions permitted or authorized for licensed nurses based on the nurse's education, preparation, and experience. (5-3-03)

**323. Supervision.** Designating or prescribing a course of action, or giving procedural guidance, direction, and periodic evaluation. Direct supervision requires the supervisor to be physically present and immediately accessible to designate or prescribe a course of action or to give procedural guidance, direction, and periodic evaluation. (4-6-05)

**334. Suspension.** An order temporarily withdrawing a nurse's right to practice nursing. (5-3-03)

**345. Technician/Technologist.** These individuals are not credentialed by regulatory bodies in Idaho and may include, but are not limited to: surgical, dialysis and radiology technicians/technologists, monitor technicians and medical assistants. (3-30-07)

**356. Universal Standards.** The recommendations published by the Center for Disease Control, Atlanta, Georgia, for preventing transmission of infectious disease, also referred to as "Standard Precautions." (5-3-03)

**011. -- 039. (RESERVED)**

**040. TEMPORARY LICENSE.**  
A temporary license is a nonrenewable license. (3-30-07)

**01. Issued at Discretion of Board.** Temporary licenses are issued, and may be extended, at the discretion of the Board. (3-30-07)

**02. Temporary Licensure by Interstate Endorsement.** A temporary license may be issued to an applicant for interstate endorsement on proof of current licensure in good standing in another state nursing jurisdiction, satisfactory documentation of employment within the three (3) years immediately preceding application, and compliance with the requirements of Section 240 of these rules. ~~(3-30-07)~~(\_\_\_\_)

**03. Temporary Licensure by Examination.** A temporary license to practice nursing until notification of examination results and completion of criminal background check may be issued to an applicant for Idaho licensure following graduation from a nursing education program recognized by the professional licensing board for another nursing jurisdiction, ~~of any state or territory of the United States~~ jurisdiction, and compliance with Section 221 of these rules. ~~(3-30-07)~~(\_\_\_\_)

**a.** The practice of nursing by new graduates holding temporary licensure shall be limited as follows: (3-30-01)

**i.** Direct supervision by a licensed registered nurse must be provided. (3-30-01)

**ii.** May not act as charge nurse. (5-3-03)

**b.** Temporary licenses issued to examination candidates will be issued for a period not to exceed three (3) months. (3-30-07)

**04. Unsuccessful Examination Candidates.** (6-11-93)

**a.** An applicant who fails to pass the licensing examination shall not be eligible for further temporary licensure. (3-30-01)

**b.** In the event that such applicant subsequently passes the licensing examination after twelve (12) months or more have elapsed following completion of the educational program, a temporary license with conditions may be issued until verification of clinical competence is received. (3-30-01)

**05. Applicants Not in Active Practice.** A temporary license with specific terms and conditions may be issued to a person who has not actively engaged in the practice of nursing in any state nursing jurisdiction for more

than three (3) years immediately prior to the application for licensure or to an applicant whose completed application indicates the need for confirmation of the applicant's ability to practice safe nursing. (3-30-01)( )

**06. Applicants from Other Countries.** Upon final evaluation of the completed application, the Board may, at its discretion, issue a temporary license to a graduate from a nursing education program outside of ~~the United States or its territories~~ a nursing jurisdiction, pending notification of results of the licensing examination. (6-11-93)( )

**07. Fee.** The applicant must pay the temporary license fee, as prescribed in Subsection 901.07 of these rules. (5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**076. PERSONS EXEMPTED BY BOARD.**

Licensure to practice nursing shall not be required, nor shall the practice of nursing be prohibited for persons exempted by the Board including: (11-28-84)

**01. Technicians and Technologists.** Technicians and technologists who comply with Section 491 of these rules. (3-30-07)

**02. Non-Resident Nurses.** Non-resident nurses currently licensed in good standing in another ~~state or territory~~ nursing jurisdiction, who are in Idaho on a temporary basis because of enrollment in or presentation of a short term course of instruction recognized or approved by the Board and who are performing functions incident to formal instruction. (3-30-07)( )

**03. Family Members and Others.** (7-1-93)

**a.** Family members providing care to a person to whom they are related by blood, marriage, adoption, legal guardianship or licensed foster care. (5-21-89)

**b.** Non-family members who provide gratuitous care to a person on a temporary basis in order to give respite to family members who regularly provide care to that person. (5-21-89)

**c.** Live-in domestics, housekeepers and companions provided they do not represent themselves as, nor receive compensation as, licensed nurses or other nursing care providers and so long as any health care provided is incidental to the services for which they are employed. (3-30-01)

**04. Nurse Apprentice.** A nurse apprentice is a currently enrolled nursing student who is employed for remuneration in a non-licensed capacity by a Board approved health care agency. (3-30-01)

**a.** Applicants for nurse apprentice shall: (3-30-01)

**i.** Be enrolled in an accredited/approved nursing education program that is substantially equivalent to Idaho's approved programs for practical/registered nursing. (6-20-92)

**ii.** Be in good academic standing at the time of application and notify the Board of any change in academic standing. (6-20-92)

**iii.** Meet the employing agency's health care skills validation requirements. (3-30-01)

**iv.** Satisfactorily complete a basic nursing fundamentals course. (3-30-01)

**v.** Use obvious designations that identify the applicant as a nurse apprentice. (3-30-01)

- b.** A completed application for nurse apprentice shall consist of: (3-30-01)

  - i. Completed application form provided by the Board, to include a fee of ten dollars (\$10); and (7-1-93)
  - ii. Verification of satisfactory completion of a basic nursing fundamentals course; and (3-30-01)
  - iii. Validation of successful demonstration of skills from a nursing education program; and (3-30-01)
  - iv. Verification of on-going good academic standing in nursing education program. (3-30-01)
- c.** An individual whose application is approved shall be issued a letter identifying the individual as a nurse apprentice for a designated time period. (3-30-01)
- d.** A nurse apprentice may, under licensed registered nurse supervision, perform all functions approved by the Board for unlicensed assistive personnel as set forth in Section 490 of these rules. (3-30-07)
- 05. Employer Application.** (3-30-01)

  - a.** A completed application for health care agencies wishing to employ nurse apprentices shall consist of: (3-30-01)

    - i. Completed application form provided by the Board; (6-20-92)
    - ii. Job descriptions for apprentice; (3-30-01)
    - iii. A written plan for orientation and skill validation; (6-20-92)
    - iv. The name of the licensed registered nurse who shall be accountable and responsible for the coordination or management of the nurse apprentice program; (3-30-01)
    - v. Assurance that a licensed registered nurse is readily available when nurse apprentice is working; (3-30-01)
    - vi. A written procedure for the nurse apprentice who is asked to perform a task that could jeopardize a patient and who declines to perform the task; and (3-30-01)
    - vii. A fee of one hundred dollars (\$100). (3-30-01)
  - b.** Following application review, the Board may grant approval to a health care agency to employ nurse apprentices for a period of up to one (1) year. (3-30-01)
  - c.** To insure continuing compliance with Board requirements, each approved agency shall submit an annual report to the Board on forms provided by the Board. Based on its findings, the Board may grant continuing approval annually for an additional one (1) year period. (6-20-92)
  - d.** At any time, if the employing agency fails to inform the Board of changes in conditions upon which approval was based or otherwise fails to comply with established requirements, the Board may notify the agency of withdrawal of approval. (6-20-92)

**077. MULTISTATE LICENSURE.**

- 01. Definitions.** In Section 077, the following terms have the meanings indicated. (3-15-02)

  - a.** Board means the regulatory body responsible for issuing nurse licenses. (3-15-02)
  - b.** Compact means the Nurse Multistate Licensing Compact. (3-15-02)

**c.** Coordinated Licensure Information System (CLIS) means an integrated process for collecting, storing, and sharing information on nurse licensing and enforcement activities related to nurse licensing laws, which is administered by a nonprofit organization composed of and controlled by state nurse licensing boards. (3-15-02)

**d.** Home state means the party state that is the nurse's primary state of residence. (3-15-02)

**e.** Party state means a state that is a signatory on the compact. (3-15-02)

**f.** Primary state of residence means the state of a person's declared fixed permanent and principal home for legal purposes; domicile. (3-29-10)

**g.** Public means an individual or entity other than designated staff or representatives of party state boards or the National Council of State Boards of Nursing, Inc. (3-15-02)

**02. Examination.** No applicant may be issued a compact license granting a multistate privilege to practice unless the applicant first obtains a passing score on the applicable NCLEX (National Council Licensure Examination)-~~examination~~: (4-6-05)(    )

**a.** NCLEX-RN for registered nursing; or (4-6-05)

**b.** NCLEX-PN for practical nursing. (4-6-05)

**03. Issuance of License in Compact Party State.** (3-15-02)

**a.** A nurse applying for a license in a home party state shall produce evidence of the nurse's primary state of residence. This evidence shall include a declaration signed by the licensee. Further evidence that may be requested includes, but is not limited to: (3-15-02)

**i.** Driver's license with a home address; (3-15-02)

**ii.** Voter registration card displaying a home address; (3-29-10)

**iii.** Federal income tax return declaring the primary state of residence; (3-29-10)

**iv.** Military Form No. 2058 - state of legal residence certificate; or (3-29-10)

**v.** W2 from U.S. Government or any bureau, division, or agency thereof, indicating the declared state of residence. (3-29-10)

**b.** A nurse on a visa from another country applying for licensure in a party state may declare either the country of origin or the party state as the primary state of residence. If the foreign country is declared the primary state of residence, a single state license will be issued by the party state. (3-29-10)

**c.** A license issued by a party state is valid for practice in all other party states unless clearly designated as valid only in the state which issued the license. (3-29-10)

**d.** When a party state issues a license authorizing practice only in that state and not authorizing practice in other party states (i.e., a single state license), the license shall be clearly marked with words indicating that it is valid only in the state of issuance. (3-29-10)

**e.** A nurse changing primary state of residence, from one (1) party state to another party state, may continue to practice under the former home state license and multistate licensure privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed thirty (30) days. (3-15-02)

**f.** The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance, and the thirty (30) day period in Paragraph 077.03.~~be~~ of these rules shall

be stayed until resolution of the pending investigation.

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

**g.** The former home state license is not valid upon the issuance of a new home state license. (3-15-02)

**h.** If a decision is made by the new home state denying licensure, the new home state shall notify the former home state within ten (10) business days, and the former home state will take action in accordance with that state's laws and regulations. (3-15-02)

**04. Multistate Licensure Privilege Limitations.** (3-15-02)

**a.** Home state boards shall include, in all disciplinary orders or agreements that limit practice or require monitoring, the requirement that the licensee subject to the order or agreement shall limit the licensee's practice to the home state during pendency of the disciplinary order or agreement. (3-15-02)

**b.** The requirement referred to in Paragraph 077.04.a. of these rules may, in the alternative, allow the nurse to practice in other party states with prior written authorization from both the home state and other party state boards. (3-30-07)

**c.** An individual who had a license that was surrendered, revoked, suspended, or an application denied for cause in a prior state of primary residence, may be issued a single state license in a new primary state of residence until such time as the individual would be eligible for an unrestricted license by the prior state(s) of adverse action. Once eligible for licensure in the prior state(s), a multistate license may be issued. (3-29-10)

**05. Information System.** (3-15-02)

**a.** Levels of Access. (3-15-02)

**i.** Public access to nurse licensure information shall be limited to: (3-15-02)

(1) The licensee's name; (3-15-02)

(2) Jurisdictions of licensure; (3-15-02)

(3) Licensure expiration date; (3-15-02)

(4) Licensure classification and status; (3-15-02)

(5) Public emergency, summary, and final disciplinary actions, as defined by contributing state authority; and (3-15-02)

(6) The status of multistate licensure privileges. (3-15-02)

**ii.** Non-party state boards shall have access to all CLIS data except current significant investigative information and other information as limited by contributing party state authority. (3-15-02)

**iii.** Party state boards shall have access to all CLIS data contributed by the party states and other information as allowed by contributing non-party state authority. (3-15-02)

**b.** Right to Review. (3-15-02)

**i.** The licensee may request, in writing, to the home state board to review data relating to the licensee in the CLIS. (3-15-02)

**ii.** If a licensee asserts that any data relating to the licensee is inaccurate, the burden of proof is on the licensee to provide evidence substantiating that claim. (3-15-02)

**iii.** Within ten (10) business days, the Board shall correct information that it finds to be inaccurate in



- the CLIS. (3-15-02)
- c. Changes in Disciplinary Data. (3-15-02)
  - i. Within ten (10) business days, the Board shall report to CLIS: (3-15-02)
    - (1) Disciplinary action, agreement or order requiring participation in alternative programs or which limit practice or require monitoring unless the agreement or order relating to participation in alternative programs is required to remain nonpublic by the contributing state authority; (3-15-02)
    - (2) Dismissal of the complaint; and (3-15-02)
    - (3) Changes in status of disciplinary action, or licensure encumbrance. (3-15-02)
  - ii. The Board shall delete current significant investigative information from the CLIS within ten (10) business days after: (3-15-02)
    - (1) A disciplinary action; (3-15-02)
    - (2) An agreement or order requiring participation in alternative programs; (3-15-02)
    - (3) An agreement or agreements, which limit practice or require monitoring; or (3-15-02)
    - (4) Dismissal of a complaint. (3-15-02)
  - iii. The CLIS administrator shall make changes to licensure information in the CLIS within ten (10) business days upon notification by a board. (3-15-02)

**078. -- 089. (RESERVED)**

**090. DENIAL OF LICENSE.**

- 01. Grounds for Denial of License.** (3-15-02)
- a. Failure to meet any requirement or standard established by law or by rules adopted by the Board; or (3-15-02)
  - b. Failure to pass the licensing examination; or (3-15-02)
  - c. False representation of facts on an application for licensure; or (3-15-02)
  - d. Having another person appear in his place for the licensing examination; or (3-15-02)
  - e. Engaging in any conduct which would be grounds for discipline under Nursing Practice Act, Section 54-1413 (1), Idaho Code, or Sections 100 or 101 of these rules. (3-15-02)
  - f. Revocation, suspension, limitation, reprimand, voluntary surrender or any other disciplinary action or proceeding, including investigation against a license, certificate or privilege to practice by another ~~state or~~ nursing jurisdiction. (3-15-02) ( )
- 02. Notification of Denial.** The Board shall give any applicant whose application for licensure is denied written notice containing a statement: (3-15-02)
- a. That the applicant has failed to qualify to be examined or licensed; and (6-1-78)
  - b. A description of the reason for denial; and (3-15-02)

- c. Directing the applicant's attention to his rights under Section 54-1413(3)(a), Idaho Code. (3-30-07)
- 03. Reapplication for a License After Previous Denial.** (3-15-02)
  - a. Reapplication for a license previously denied must include evidence, satisfactory to the Board, of rehabilitation, or elimination or cure of the conditions for denial. (3-15-02)
  - b. Evaluation of reapplication for a license denied under Section 54-1413, Idaho Code, shall include consideration of at least the following factors: (3-15-02)
    - i. The nature and severity of the act or omission which resulted in the denial of license; (7-1-93)
    - ii. The conduct of the applicant subsequent to the denial of license; (7-1-93)
    - iii. The lapse of time since denial of license; (7-1-93)
    - iv. Compliance with any conditions the Board may have stipulated as a prerequisite for reapplication; (7-1-93)
    - v. The degree of rehabilitation attained by the applicant as evidenced by statements sent directly to the Board from qualified people who have professional knowledge of the applicant; and (7-1-93)
    - vi. Personal interview by the Board, at its discretion. (3-15-02)
  - c. Reapplication files will remain open and active for a period of twelve (12) months from date of receipt. After expiration of the twelve (12) months, the file will be closed and any subsequent reapplication will require submission of a new application form and payment of required fees. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**101. STANDARDS OF CONDUCT.**

- 01. Violations.** Any violation of these Standards of Conduct shall be grounds for disciplinary action in accordance with Section 54-1413(1), Idaho Code, of the Idaho Nursing Practice Act and Section 090 or 100 of these rules. (3-30-07)
- 02. Classification.** For purposes of convenience only, the standards of conduct are grouped generally into one (1) of three (3) categories: license, practice, and professional responsibility. The fact that any particular standard is so classified in any particular category will not be relevant for any purpose other than ease of use. (3-15-02)
- 03. License.** (3-15-02)
  - a. **Period of Practice.** The nurse shall practice registered or practical nursing in Idaho only with a current Idaho license or during the period of valid temporary licensure or as otherwise allowed by law. (3-15-02)
  - b. **Aiding in Violation of Law.** The nurse shall not aid, abet, or assist any other person to violate or circumvent laws or rules pertaining to the conduct and practice of nursing. (11-28-84)
  - c. **Reporting Grossly Negligent or Reckless Practice.** The nurse shall report to the Board any licensed nurse who is grossly negligent or reckless in performing nursing functions or who otherwise violates the Nursing Practice Act or the Board rules. (7-1-93)
  - d. **Unlawful Use of License.** The nurse shall not permit his license to be used by another person for

any purpose or permit unlicensed persons under his jurisdiction or supervision to indicate in any way that they are licensed to perform functions restricted to licensed persons. (7-1-93)

**e.** Impairment of Ability. The nurse shall not practice nursing while the ability to practice is impaired by alcohol or drugs or physical, mental or emotional disability. (11-28-84)

**04. Practice.** (3-15-02)

**a.** Perform Acts. The nurse shall have knowledge of the statutes and rules governing nursing and shall function within the defined legal scope of nursing practice. The nurse shall not assume any duty or responsibility within the practice of nursing without adequate training or where competency has not been maintained. (3-15-02)

**b.** Delegating Activities to Others. The nurse shall delegate activities only to persons who are competent and qualified to undertake and perform the delegated activities and shall not delegate to non-licensed persons functions that are to be performed only by licensed nurses, ~~to the detriment of patient safety.~~ (11-28-84) ( )

**c.** Supervision. The nurse delegating functions shall supervise the persons to whom the functions have been assigned or delegated. (11-28-84)

**d.** Safeguarding Patient. The nurse shall act to safeguard the patient from the incompetent practice, verbal or physical abusive acts or illegal practice of any person. (7-1-93)

**e.** Prescription Drugs. The nurse shall not obtain, possess, furnish or administer prescription drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs. (11-28-84)

**f.** Leaving Assignment. The nurse shall not abandon patients in need of nursing care in a negligent or wanton manner. The nurse shall leave a nursing assignment only after properly reporting and notifying appropriate personnel and shall transfer responsibilities to appropriate personnel or care giver when continued care is required by the patient's condition. (7-1-91)

**g.** Respecting Patient's Privacy. The nurse shall respect the patient's privacy. (7-1-91)

**h.** Confidentiality. The nurse shall not disseminate information about the patient to individuals not entitled to such information except where such information is required by law or for the protection of the patient. (7-1-91)

**i.** Observe and Report. The nurse shall observe the condition and signs and symptoms of a patient, record the information, and report to appropriate persons any significant changes. (7-1-91)

**j.** Collaboration. The nurse shall function as a member of the health team and shall collaborate with other health team members as necessary to meet the patient's health needs. (7-1-91)

**k.** Universal Standards. The nurse shall adhere to universal standards and carry out principles of asepsis and infection control and shall not place the patient, the patient's family or the nurse's coworkers at risk for the transmission of infectious diseases. (3-15-02)

**05. Professional Responsibility.** (3-15-02)

**a.** Disclosing Contents of Licensing Examination. The nurse shall not disclose contents of any licensing examination, or solicit, accept, or compile information regarding the contents of any examination before, during, or after its administration. (11-28-84)

**b.** Considerations in Providing Care. In providing nursing care, the nurse shall respect and consider the individual's human dignity, health problems, personal attributes, national origin, and handicaps and shall not discriminate on the basis of age, sex, race, religion, economic or social status or sexual preferences in the rendering of nursing services. (11-28-84)

**c.** Responsibility and Accountability Assumed. The nurse shall be responsible and accountable for his nursing judgments, actions and competence. (7-1-93)

**d.** Witnessing Wastage of Controlled Substances Medication. Controlled substances may not be wasted without witnesses. The nurse shall not sign any record as a witness attesting to the wastage of controlled substance medications unless the wastage was personally witnessed. The nurse shall not solicit the signatures on any record of a person as a witness to the wastage of a controlled substance when that person did not witness the wastage. The nurse shall solicit signatures of individuals who witnessed the wastage in a timely manner. (3-30-07)

**e.** Record-keeping. The nurse shall make or keep accurate, intelligible entries into records required by law, employment or customary practice of nursing, and shall not falsify, destroy, alter or knowingly make incorrect or unintelligible entries into patients' records or employer or employee records. (11-28-84)

**f.** Diverting or Soliciting. The nurse shall respect the property of the patient and employer and shall not take or divert equipment, materials, property, or drugs without prior consent or authorization, nor shall the nurse solicit or borrow money, materials or property from patients. (3-15-02)

**g.** Exploit, Solicit, or Receive Fees. The nurse shall not exploit the patient or the patient's family for personal or financial gain or offer, give, solicit, or receive any fee or other consideration for the referral of a patient or client. (3-15-02)

**h.** Professionalism. The nurse must not abuse the patient's trust. The nurse shall respect the dignity of the profession and maintain appropriate professional boundaries with respect to patients, the patients' families, and the nurse's coworkers. The nurse will not engage in violent, threatening or abusive behavior towards patients, patients' families or the nurse's coworkers. The nurse must be aware of the potential imbalance of power in professional relationships with patients, based on their need for care, assistance, guidance, and support, and ensure that all aspects of that relationship focus exclusively upon the needs of the patient. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**220. QUALIFICATIONS FOR LICENSURE BY EXAMINATION.**

**01. In-State.** Individuals who have successfully completed all requirements for graduation from an Idaho nursing education program approved by the Board shall be eligible to make application to the Board to take the licensing examination. (6-11-93)

**02. Out-of-State.** Individuals who hold a certificate of completion from a nursing education program having board of nursing approval in another ~~state or territory of the United States~~ **nursing jurisdiction** shall be eligible to make application to the Board to take the licensing examination, providing they meet substantially the same basic educational requirements as graduates of Idaho nursing education programs at the time of application. (3-15-02)(    )

**03. Practical Nurse Equivalency Requirement.** An applicant for practical nurse licensure by examination who has not completed an approved practical nurse program, must provide satisfactory evidence (such as official transcripts) of successful completion of nursing and related courses at an approved school preparing persons for licensure as registered nurses to include a course in personal and vocational relationships of the practical nurse. Related courses must be equivalent to those same courses included in a practical nursing program approved by the Board. (3-15-02)

**04. Time Limit for Writing Examinations.** Graduates who do not take the examination within twelve (12) months following completion of the nursing education program may be required to follow specific remedial measures as prescribed by the Board. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**240. QUALIFICATIONS FOR LICENSURE BY ENDORSEMENT.**

An applicant for Idaho licensure by interstate endorsement must: (7-1-93)

**01. Graduation Required.** Be a graduate of a state approved/accredited practical or registered nursing education program that is substantially equivalent to Idaho's board-approved practical or registered nursing education program. Applicants for practical nurse licensure may also qualify under the provisions of Section 241 of these rules. (7-1-93)

**02. Licensing Examination.** Have taken the same licensing examination as that administered in Idaho and achieved scores established as passing for that examination by the Board, ~~unless the applicant was licensed by examination prior to 1950.~~ (6-11-93)(      )

**03. Minimum Requirements.** In lieu of the requirements in Subsections 240.01 and 240.02 of this rule, have qualifications that are substantially equivalent to Idaho's minimum requirements. (5-8-09)

**04. Current Practice Experience.** Have actively practiced nursing at least eighty (80) hours within the preceding three (3) years. (3-30-07)

**05. License from Another ~~State or Territory~~ Nursing Jurisdiction.** Hold a license in good standing from another ~~state or territory of the United States~~ nursing jurisdiction. The license of any applicant subject to official investigation or disciplinary proceedings shall not be considered in good standing. (7-1-91)(      )

**241. LICENSURE BY EQUIVALENCY AND ENDORSEMENT LICENSURE.**

**01. Application by Equivalency.** An applicant for practical nurse licensure by interstate endorsement based on equivalency must meet the following requirements: (3-30-07)

**a. Licensing Examination.** Have successfully taken the same licensing examination as that administered in Idaho; and (7-1-93)

**b. License from Another ~~State or Territory~~ Nursing Jurisdiction.** Hold a license in another ~~state or territory~~ nursing jurisdiction based on successful completion of nursing and related courses at an approved school preparing persons for licensure as registered nurses to include a course in personal and vocational relationships of the practical nurse (or equivalent experience) and additional courses equivalent to those same courses included in a practical nursing program approved by the Board, and provide evidence thereof. (3-30-07)(      )

**02. Applicants Licensed in Another ~~State or Territory~~ Nursing Jurisdiction.** Graduates of schools of nursing located outside the United States, ~~or~~ its territories or commonwealths who are licensed in a ~~state or territory~~ nursing jurisdiction and who meet the requirements of Subsections 240.02 through 240.05 of these rules may be processed as applicants for licensure by endorsement from another state. (3-30-07)(      )

**03. Application for Licensure by Endorsement.** A completed application for licensure by interstate endorsement must include all of the following: (7-1-93)

**a. Application Form.** Completed, notarized application form provided by the Board; (6-1-78)

**b. Verification.** Verification and documentation of licensure status from state of applicant's original licensure; (3-15-02)

**c. Employment Reference.** One (1) satisfactory nursing employment reference from the three (3) year period immediately preceding the application; (3-15-02)

- d. Census Questionnaire. Completed Census Questionnaire; (6-1-78)
- e. Fee. Payment of all required fees; and (3-15-02)
- f. Criminal Background Check. A current fingerprint based criminal history check as set forth in Section 54-1401(3), Idaho Code. (4-6-05)

**242. -- 259. (RESERVED)**

**260. QUALIFICATIONS FOR LICENSURE OF GRADUATES OF SCHOOLS OF NURSING LOCATED OUTSIDE THE UNITED STATES, ~~OR~~ ITS TERRITORIES, OR COMMONWEALTHS.**

A graduate from a nursing education program outside of the United States, ~~or~~ its territories or commonwealths must: ~~(3-30-01)~~( )

**01. Qualifications.** Demonstrate nursing knowledge and ~~written and spoken~~ English proficiency skills in reading, writing, speaking and listening. ~~(3-30-07)~~( )

**02. Education Credentials.** Have education qualifications that are substantially equivalent to Idaho's minimum requirements at the time of application. (3-30-01)

**03. License.** Hold a license or other indication of authorization to practice in good standing, issued by a government entity or agency from a country outside the United States, ~~or~~ its territories or commonwealths. ~~(3-30-07)~~( )

**04. Examination/Re-Examination.** Take and achieve a passing score on the licensing examination required in Subsection 222.01 of these rules. (3-30-07)

**261. APPLICATION FOR LICENSURE OF GRADUATES OF SCHOOLS OF NURSING LOCATED OUTSIDE THE UNITED STATES, ~~OR~~ ITS TERRITORIES, OR COMMONWEALTHS.**

A completed application for licensure by a graduate of a nursing education program outside of the United States, ~~or~~ its territories or commonwealths must include the following: ~~(3-30-01)~~( )

**01. Verification.** Verification of demonstrated nursing knowledge and ~~written and spoken~~ English proficiency skills in reading, writing, speaking and listening. ~~(4-6-05)~~( )

**02. Application Form.** Completed notarized application form provided by the Board. (6-1-78)

**03. Official Transcript.** Official transcript from the applicant's nursing education program, and certified translation if original transcript is not in English or completed equivalence credentials form issued by an organization acceptable to the Board. (3-30-01)

**04. Verification of Licensure.** Verification of licensure or other authority to practice from state, province, or country of applicant's original licensure. ~~(6-1-78)~~( )

**05. Employment Reference.** One (1) satisfactory nursing employment reference from the three (3) year period immediately preceding the application. (3-30-01)

**06. Fee.** Payment of the fee for licensure by examination. (3-30-01)

**07. Criminal Background Check.** A current fingerprint based criminal history check as set forth in Section 54-1401(3), Idaho Code. (4-6-05)

**IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**  
**24.01.01 - RULES OF THE BOARD OF ARCHITECTURAL EXAMINERS**  
**DOCKET NO. 24-0101-1201**

**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 54-312, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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 Board of Architectural Examiners is adding definitions to clarify direct supervision of non-licensed employees and responsible control of architectural drawings to be sealed. The examination section is being updated to address changes to the nationally administered examination. Since registration of interns with the Board is no longer necessary, this requirement is being deleted. The use of an unlicensed individual's name in an architectural firm name and the use of an architect's seal are being clarified. Finally, the Board's rule regarding certain interpretations is being updated to eliminate language no longer applicable.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is simple in nature and the proposed changes are being made to reflect changes in the industry, including the National Council of Architect Registration Boards (NCARB) standards.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W State  
Boise, ID 83702  
(208) 334-3233 Ph.  
(208) 334-3945 fax

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-0101-1201**

**010. DEFINITIONS (RULE 10).**

- 01. Board.** The Board of Architectural Examiners as prescribed in Section 54-312, Idaho Code. (7-1-93)
- 02. Bureau.** The Bureau of Occupational Licenses as prescribed in Sections 54-605 and 67-2602, Idaho Code. (3-15-02)
- 03. Direct Supervision.** Direct supervision of an unlicensed individual in the practice of architecture means the exercise of management, control, authority, responsibility, oversight and guidance over the unlicensed individuals work, activities and conduct. ( )
- 04. Responsible Control.** Responsible control means that amount of control over and detailed knowledge of the content of technical submissions during their preparation as is ordinarily exercised by registered architects applying the required professional standard of care. Reviewing, or reviewing and correcting, technical submissions after they have been prepared by others does not constitute the exercise of responsible control because the reviewer has neither control over nor detailed knowledge of the content of such submissions throughout their preparation. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**350. REGISTRATION EXAMINATION (RULE 350).**

The Board, having found that the content and methodology of the ARE prepared by NCARB is the most practicable and effective examination to test an applicant's qualifications for registration, adopts the ARE as the single, written and/or electronic examination for registration of architects in this state, and further adopts the following rules with respect thereto: (7-1-97)

- 01. When Taken.** The Board will cause the ARE, prepared by NCARB, to be administered to all applicants eligible, in accordance with the requirements of the Board, by their training and education to be examined for registration on dates scheduled by the NCARB. The Board shall cause repeat divisions of the ARE to be administered to qualified candidates on such dates as are scheduled by the NCARB. The ARE examination is a multiple part examination prepared by NCARB. Content of the examination in all of its sections is available from the Board or NCARB. (4-11-06)
- 02. Grading.** The ARE shall be graded in accordance with the methods and procedures recommended by the NCARB. To achieve a passing grade on the ARE, an applicant must receive a passing grade in each division. Grades from the individual division may not be averaged. Applicants will have unlimited opportunities to retake division which they fail except as set forth in these rules. The Board shall accept passing grades of computer administered divisions of the ARE as satisfying the requirements for said division(s) when such examinations are administered as prescribed by the NCARB. (4-11-06)
- 03. Passing (ARE).** To pass the ARE, an applicant must achieve a passing grade on each division. Effective July 1, 2006, and subject to certain conditions, a passing grade for any division of the ARE shall be valid for five (5) years, after which time the division must be retaken unless all divisions have been passed. The Board may allow a reasonable extension of such period in circumstances where completion of all divisions is prevented by a medical condition, active duty in military service, or other like causes. (4-11-06)
- 04. Transition.** The transitional rules are as follows: (4-11-06)
- a.** For applicants who have passed all divisions of the ARE by July, 2006 regardless of the time taken,



will have passed the ARE.

(4-11-06)

**b.** For applicants who have passed one (1) or more but not all divisions of the ARE by July 1, 2006, such applicants will have five (5) years to pass all remaining divisions. A passing grade for any remaining division shall be valid for five (5) years, after which time the division must be retaken if the remaining divisions have not been passed. The five (5) year period shall commence after July 1, 2006, on the date when the first passed division is administered. Any division passed prior to January 1, 2006, shall no longer remain valid if all remaining divisions have not been passed by July 1, 2014. (4-11-06)( )

**c.** For applicants who have passed no divisions of the ARE by July 1, 2006, such applicants shall be governed by the ~~above~~ five (5) year requirement outlined in Subsection 350.04.b of these rules. The five (5) year period shall commence on the date when the first passed division is administered. (4-11-06)( )

**d.** After July 1, 2014, approval to take the ARE shall terminate unless the applicant have passed or failed a division of the ARE within a period of five (5) years. Any applicant whose approval has so terminated must reapply for approval to take the ARE. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**375. ARCHITECTURAL INTERN (RULE 375).**

An individual may represent themselves as an architectural intern only under the following conditions: (3-15-02)

**01. Supervision.** Each architectural intern shall be employed by and work under the direct supervision of an Idaho licensed architect. (3-15-02)

**02. IDP Enrollment.** Each architectural intern shall be enrolled in the National Council of Architectural Registration Board's (NCARB) Intern Development Program (IDP) and shall maintain a record in good standing. (3-15-02)

**03. Record.** Each architectural intern shall possess either: (3-15-02)

**a.** A record with the NCARB establishing that IDP training units are being earned in any of the IDP training settings A, B, C, D or E; or (3-15-02)

**b.** A record establishing completion of all IDP training regulations as specified by NCARB. (3-15-02)

**04. Prohibitions.** An architectural intern shall not sign or seal any architectural plan, specification, or other document. An architectural intern shall not engage in the practice of architecture except under the direct supervision of an Idaho licensed architect. (3-15-02)

~~**05. Registration.** Each architectural intern shall register with the Board on forms provided by the Bureau of Occupational Licenses that shall include the names and addresses of their employer, IDP supervisor, and IDP mentor. (3-15-02)~~

**376. -- 399. (RESERVED)**

**400. MISCELLANEOUS REQUIREMENTS (RULE 400).**

**01. Practice of Architecture.** Idaho Law prohibits the practice of architecture by any unlicensed person or firm for any reason. (7-1-93)

**02. Corporations.** Corporations organized to do general business in the state of Idaho may not practice architecture in the state of Idaho. (7-1-93)

**03. Firm Names.** Firm names incorporating the use of names of unlicensed individuals are considered

in violation of Section 54-310, Idaho Code. A firm may continue to utilize the name of a retired or deceased formerly licensed architect so long as their unlicensed status is clearly disclosed. (7-1-93)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**410. USE OF AN ARCHITECT'S SEAL (RULE 410).**

An architect's seal ~~shall~~ may be placed on all technical submissions prepared personally by the architect or prepared ~~by his staff~~ under the architect's ~~direction and personal supervision~~ responsible control or as otherwise allowed under the provisions of Section 54-308, Idaho Code. ~~An architect shall only seal those documents prepared by another licensed professional where the architect has both control over and detailed professional knowledge of the work or matters contained in said document.~~ Nothing in this rule shall limit an architect's responsibility to the owner for the work of other licensed professionals to the extent established by contract between the owner and architect. (4-5-00)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**550. INTERPRETATIONS (RULE 550).**

The following interpretation of laws relating to architecture in Idaho Code are hereby made by the Board. (7-1-93)

**01. Reference to Building.** Under Section 54-309, reference to any building wherein the safeguarding of life, health, and property is concerned means any building which public or private sector of population may use or any building into which the public or private sector of the population is invited either as spectators, visitor, student, guest, or employee, or any building where the private or public sector of the population conducts business. (7-1-93)

~~02. Administration of Construction Contracts. Under Section 54-309, paragraph 1-e, "Practice of Architecture," Section 54-305, paragraph 1-f, Grounds for Discipline, the words "Administration of Construction Contracts," in accordance with current knowledge and usage in the profession means "Administration of the Contract" as defined in the relevant Contract for Construction or Owner-Architect Agreement as published by the American Institute of Architects.~~ (4-5-00)

**03. Professional Standards.** Under Section 54-305, an architect shall be completely objective and truthful in all professional reports, statements, or testimony and shall include therein all relevant and pertinent information known to him. (7-1-93)

~~04. Direct Supervision Contracts. Direct supervision is that degree of supervision by a licensed architect overseeing the work of another whereby the architect has both control over, and detailed professional knowledge of, the work prepared under his or her supervision.~~ The primary contract or agreement involving the practice of architecture for the project must be between the an architect ~~of record~~ and the entity for which architectural services are provided, ~~not between the person being supervised and the entity for which the services are provided.~~ (7-1-98)(    )

## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.04.01 - RULES OF THE IDAHO BOARD OF COSMETOLOGY**

#### **DOCKET NO. 24-0401-1201 (FEE RULE)**

#### **NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-821, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

The Idaho Board of Cosmetology made changes in its fee schedule during the 2012 session. This fee change in a separate section, is necessary to be consistent with the prior change. Changes were also made to the Board's law during the 2011 session that replaced the term "student instructor" with "instructor trainee." The proposed change updates the new title in the rules. Finally, changes are being made to clarify that animals allowed in a cosmetology shop must comply with the ADA (Americans with Disabilities Act) definitions.

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

The fee schedule in these rules was changed during the 2012 session and the ten dollar (\$10) fee shown in Section 176 is being eliminated to be consistent with the prior rule change.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: There is no impact on general or dedicated funds as the fee is not being assessed.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these rules are simple in nature, are necessary to comply with recent law or rule changes and were discussed in a noticed, open meeting of the Board of Cosmetology.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W State  
Boise, ID 83702  
(208) 334-3233 Ph.  
(208) 334-3945 fax

**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 24-0401-1201**

**176. APPLICATION ~~AND FEE~~ FOR PERMIT TO PRACTICE, DEMONSTRATE, OR TEACH COSMETOLOGY. (RULE 176).**

Application ~~and fee~~ for permit to practice, demonstrate, or teach cosmetology shall be made by the sponsoring agent on forms furnished by the Board and must be received in that office at least seven (7) business days prior to the date of practice, demonstration, or instruction. The applicant shall include the name, address, license number, and the state, territory, possession, or country of licensure, ~~and a ten dollar (\$10) fee~~ for each person who shall practice, demonstrate, or instruct. ~~The permit fee shall not be required for those persons holding a current personal Idaho license issued by the Board.~~ Said practice, demonstration, or instruction shall not commence until the permit is received by the applicant. The permit shall be available for inspection by the Board or its agent at the location of said practice, demonstration, or instruction. The applicant shall be required to inform each person of the sanitary rules for shops and schools prior to said practice, demonstration, or instruction. If the application meets objective requirements established by the Board and the location where the permitted activities are to occur meets the sanitary requirements of Board Rule 800, the Bureau may issue the permit. (3-29-10)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**600. INSTRUCTOR RULES (RULE 600).**

**01. Requirements for Instructor License. (7-1-97)**

a. Application for an instructor license shall be made on forms furnished by the Board and accompanied with the required fees. (7-1-97)

b. Section 54-805(2), Idaho Code, provides for twelve (12) semester college credit hours or equivalent, as approved by the Board, or successful completion of the examination required by Board rules. Credit hours must be obtained from the Education Department, Speech Communications Department or from the Psychology/Sociology Department and other credit at the discretion of the Board. (5-8-09)

c. Equivalent: (7-1-97)

i. Teaching seminars directed to cosmetology, nail technology, esthetics, or electrology must be approved by the Board. Fourteen (14) clock hours is equivalent to one (1) semester college credit hour in an approved seminar. Verification of satisfactory completion must be submitted to the Board for their approval. (3-30-01)

ii. Verified satisfactory teaching as a qualified instructor from another state three (3) of the previous five (5) years immediately prior to application. (7-1-97)

d. Experience Requirements for Instructor Applicant (Reference Section 54-805(2)(8), Idaho Code). Five (5) years experience is deemed "immediately preceding" if obtained during the seven (7) year period immediately preceding application for licensure. (7-1-97)

e. An electrologist with fewer than five (5) years' experience as a licensed electrologist must complete three (3) months, five hundred (500) hours of teacher's instruction in a cosmetology school approved to teach electrology as set forth in Subsection 550.08. (3-30-01)

f. Six (6) months of student teaching is considered to be one thousand (1,000) hours of instruction. Three (3) months of student teaching is considered to be five hundred (500) hours of instruction. (5-8-09)

**02. Records Required.** Records required of schools teaching ~~student~~ instructors ~~trainees~~ shall be maintained in accordance with the records required for schools of cosmetology. (3-30-01)(    )

- 03. Record of Instruction.** Records of the operations completed by each student shall be maintained of the following: (3-30-01)
- a.** Lesson Planning. (3-30-01)
  - b.** Audio Visual Aid Preparation. (3-30-01)
  - c.** Theory Class. (3-30-01)
  - d.** Practical Demonstrations. (3-30-01)
  - e.** Testing and Evaluation Theory. (3-30-01)
  - f.** Testing and Evaluation. (3-30-01)
  - g.** Clinic Floor Supervision. (3-30-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**800. INSPECTION AND SANITARY RULES. (RULE 800).**

Each cosmetological establishment and school of cosmetology and barber shop and school of barbering is subject to inspection by the Board or its designated agents in accordance with the following rules (reference Section 54-824, and 54-524, Idaho Code). Maximum possible score is indicated by number. (7-1-97)

**01. Premises.** All shops and schools shall be open to inspection during business hours to authorized agents of the Cosmetology/Barber Boards. Shops and schools must be separated from living areas by substantial walls and/or closable doors. All shops and schools must be maintained in an orderly manner and shall be heated, lighted, and ventilated so as to be safe and comfortable to the operators and patrons. Score - five (5) (7-1-97)

**02. Floors, Walls, and Ceilings.** Floors, walls, ceilings, furniture, and all other fixtures shall be kept clean and in good repair at all times. Score - five (5) (7-1-97)

**03. Instrument Cleaning.** All instruments used by operators shall be thoroughly cleaned after each use and prior to storage and/or sanitation. Score - fifteen (15) (7-1-97)

**04. Instrument Sanitation.** All instruments used by operators shall be sanitized after cleaning and prior to use on each patron, with a sanitizing agent registered by the Environmental Protection Agency as Hospital Grade or better. Every precaution shall be taken to prevent the transfer of disease-causing pathogens from person to person. Score - fifteen (15) (7-1-97)

**05. Towels.** Clean towels shall be used for each patron. A clean paper or cloth neckband shall be used to provide a sanitary barrier which shall be maintained between each patron's neck and all multi-use capes. Paper towels and paper neckstrips shall be disposed of after one (1) use. Score - five (5) (7-1-97)

**06. Storage of Equipment.** All instruments, towels, and linens shall be stored in clean, closed cabinets, drawers, and/or containers after they are cleaned and sanitized. Score - five (5) (7-1-97)

**07. Dispensers.** All solutions and/or compounds shall be clearly labeled, maintained, and dispensed in a sanitary manner. All single-use applicators shall be disposed of after one (1) use. Paraffins, waxes and all other solutions and/or compounds shall be maintained free of any foreign contaminants. Score - five (5) (7-1-97)

**08. Uniforms.** All clothing worn by operators shall be clean and washable. Score - five (5) (7-1-97)

**09. Water Supply.** Water supplies shall be from an approved source. Sufficient basins with hot and cold running water, approved drainage systems, soap and single-use towels shall be conveniently located within the work area. Every operator and/or student shall wash their hands prior to providing service to any patron. Score - ten (10) (7-1-97)

**10. Toilet Facilities.** Clean, adequate and convenient toilet facilities, located and accessible from within the building where the shop or school is located, shall be available for use by operators and patrons. A basin with hot and cold running water, approved drainage systems, soap and single-use towels shall be provided within said facilities. Score - ten (10) (7-1-97)

**11. Safety.** Each shop and school shall have a clearly identifiable first-aid kit readily accessible on the premises. No animals are allowed in shops or schools except ~~those animals~~ service dogs trained to ~~provide service to the physically impaired~~ do work or perform tasks for persons with disabilities. The definition of service animals and disabilities shall be as set forth in U.S. Department of Justice Regulations at 28 C.F. R. Section 36.104 effective March 15, 2011. Score - five (5) (7-1-97)( )

**12. Licenses and Certificates.** All shops and schools must be licensed prior to their operation and must be under the direct supervision of a licensed operator. A current shop and/or school license, valid operator license(s) or permit(s), a copy of these rules, and a valid classification card shall be conspicuously displayed in the work area of each shop and/or school for the information of operators, Board agents, and the public in general. Score - fifteen (15) (7-1-97)

**13. Classification of Shops and Schools.** Following an inspection, each shop and school will receive classification as follows: 100% - 90% = "A"; 89% - 80% = "B"; 79% and below = "C." The "C" classification denotes an unacceptable rating and improvements are required within thirty (30) days for continued operation. (7-1-97)

## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.06.01 - RULES FOR THE LICENSURE OF OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS**

**DOCKET NO. 24-0601-1201**

#### **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 54-3717, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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 Board of Occupational Therapists and Occupational Therapy Assistants is changing its rules to incorporate by reference the updated Certification Renewal Handbook published by the National Board for Certification in Occupational Therapy (NBCOT). The rule also clarifies close supervision and removes the requirement that two (2) CEU's must be recommended by the Idaho Occupational Therapy Association to reflect changes in the law.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 changes are simple in nature and were discussed at scheduled noticed board meetings.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

Certification Renewal Handbook published by the National Board for Certification in Occupational Therapy (NBCOT) has been updated from the 2009 edition to the 2012 edition to update approved continuing education activities.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at 208 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W State  
Boise, ID 83702  
(208) 334-3233 Ph.  
(208) 334-3945 fax

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-0601-1201**

**004. INCORPORATION BY REFERENCE.**

The "PDU Activities Chart" on pages 14-17 of the document titled National Board for Certification in Occupational Therapy (NBCOT), Inc. Certification Renewal Handbook, 2009~~12~~, as published by the NBCOT, Inc. and copyrighted to NBCOT, Inc. in 2009~~12~~, which is referenced in Subsection 250.1.b. of these rules. All documents incorporated by reference are available at the Board's office and through the Board's website. ~~(3-29-10)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**011. SUPERVISION.**

An occupational therapist shall supervise and be responsible for the patient care given by occupational therapy assistants, graduate occupational therapists, graduate occupational therapy assistants, student occupational therapists, student occupational therapy assistants, and aides. (3-29-10)

**01. Skill Levels.** The following skill levels apply to occupational therapy assistants, graduate occupational therapists, graduate occupational therapy assistants, student occupational therapists, student occupational therapy assistants and aides: (4-7-11)

**a.** Entry Level - Working on initial skill development (zero to one (0-1) year experience) or working in a new area of practice; (3-29-10)

**b.** Intermediate Level - Increased independence and mastery of basic roles and functions. Demonstrates ability to respond to new situations based on previous experience (generally one to five (1-5) years' experience); (3-29-10)

**c.** Advanced Level - Refinement of skills with the ability to understand complex issues and respond accordingly. (3-29-10)

**02. Supervision Levels.** The following supervision levels apply to occupational therapy assistants, graduate occupational therapists, graduate occupational therapy assistants, student occupational therapists, student occupational therapy assistants and aides: (4-7-11)

**a.** Direct Line of Site Supervision - An occupational therapist or occupational therapy assistant must provide direct line of site supervision to an aide; (3-29-10)

**b.** Direct Supervision - Daily, direct contact at the site of work with the supervisor physically present at all times within the facility when the supervisee renders care and requires the supervisor to co-sign all documentation that is completed by the supervisee. This supervision is the minimal level of supervision required for students, for entry or intermediate level occupational therapy assistants applying deep thermal and electrotherapeutic modalities, and for advanced level occupational therapy assistants who apply such modalities while lacking the education and training required in Subsection 012.01 of these rules; (4-7-11)

**c.** Close Supervision - ~~Daily, direct contact at the site of work.~~ The occupational therapist provides ~~daily~~ direction in developing the plan of treatment and ~~periodically~~ inspects ~~on-site~~ the actual implementation of the plan ~~at least every two (2) weeks.~~ This supervision is the minimal level of supervision required for entry level occupational therapy assistants and graduate occupational therapy assistants; ~~(4-7-11)~~( )

**d.** Routine Supervision - Requires direct contact at least every two (2) weeks at the site of work, with interim supervision occurring by other methods, such as by telephone or written communication. This supervision is the minimal level of supervision required for graduate occupational therapists and intermediate level occupational therapy assistant. It also is the minimum level of supervision required for advanced level occupational therapy



assistants applying deep thermal and electrotherapeutic modalities while possessing the education and training specified in Subsection 012.01 of these rules; (4-7-11)

**e.** General Supervision - Initial direction and periodic review of the following: service delivery, update of treatment plans, and treatment outcomes. The supervisor need not at all times be present at the premises where the occupational therapy assistant is performing the professional services. However, not less than monthly direct contact must be provided, with supervision available as needed by other methods. This supervision is the minimal level of supervision required for an intermediate to advanced occupational therapy assistant. (3-29-10)

**03. Supervision Ratios.** An occupational therapist may supervise up to three (3) full-time occupational therapy assistants, but never more than two (2) entry level occupational therapy assistants. The total number of supervised occupational therapy assistants, non-licensed occupational therapy personnel (including any graduate occupational therapists, graduate occupational therapy assistants, student occupational therapy, student occupational therapy assistants, and aides), and occupational therapists in training to provide deep thermal, electrotherapeutic modalities and wound care may not exceed five (5) without prior Board approval. The Board may permit the supervision of a greater number by an occupational therapist if, in the Board's opinion, there would be adequate supervision and the public's health and safety would be served. It is the supervising occupational therapist's responsibility to notify the Board of any circumstances requiring approval of a greater number and to submit a written plan for resolution of the situation. (4-7-11)

**04. Record Keeping.** The occupational therapy assistant, graduate occupational therapist, and graduate occupational therapy assistant must maintain on file at the job site signed documentation reflecting supervision activities. This supervision documentation must contain the following: date of supervision, means of communication, and information discussed. Both the supervising occupational therapist and the person being supervised must sign each entry. (4-7-11)

**05. Occupational Therapy Assistants.** Occupational Therapy Assistants may deliver occupational therapy services under the supervision of occupational therapists as follows. The occupational therapy assistant: (3-29-10)

**a.** May only select, implement, and modify therapeutic activities and interventions that are consistent with client goals, the requirements of the practice setting, and the occupational therapy assistant's demonstrated competency levels; (3-29-10)

**b.** Must not initiate a treatment program until the occupational therapist has evaluated the client and planned treatment for the client, or discharge the client from a treatment program without supervision from the occupational therapist; (3-29-10)

**c.** Must not perform an evaluation, but may contribute to the evaluation process with the supervision of the occupational therapist; (3-29-10)

**d.** May participate in the screening process by collecting data, such as records, by general observation and by conducting a general interview, and may communicate the information gathered to the occupational therapist; (3-29-10)

**e.** May track the need for reassessment, report changes in status that might warrant reassessment or referral, and administer the reassessment under the supervision of the occupational therapist; (3-29-10)

**f.** Must immediately discontinue any specific treatment procedure which appears harmful to the client, and so notify the occupational therapist; (3-29-10)

**g.** Is responsible for knowing about the client's targeted occupational therapy outcomes and for providing information and documentation related to outcome achievement; (3-29-10)

**h.** May implement outcome measurements and provide needed client discharge resources. (3-29-10)

**06. Aides.** Aides do not provide skilled occupational therapy services. An aide is trained by an

occupational therapist or an occupational therapy assistant to perform specifically delegated tasks. The occupational therapist is responsible for the overall use and actions of the aide. An aide first must demonstrate competency to be able to perform the assigned, delegated client and non-client tasks. The occupational therapist must oversee the development, documentation, and implementation of a plan to supervise and routinely assess the ability of the occupational therapy aide to carry out non-client and client-related tasks. The occupational therapy assistant may contribute to the development and documentation of this plan. An aide shall function only under the direct line of sight supervision of an occupational therapist or occupational therapy assistant. An aide may provide: (3-29-10)

a. Non-client-related tasks, including clerical and maintenance activities and preparation of the work area or equipment. (3-29-10)

b. Client-related, routine tasks during which the aide may interact with the client. The following conditions must exist when an occupational therapist or occupational therapy assistant delegates a selected client-related task to the aide: (3-29-10)

i. The outcome anticipated for the delegated task is predictable. (3-29-10)

ii. The client and environment are stable and will not require that judgment, interpretations, or adaptations be made by the aide. (3-29-10)

iii. The client has demonstrated some previous performance ability in executing the task. (3-29-10)

iv. The task routine and process have been clearly established. (3-29-10)

v. The aide has been trained and is able to demonstrate competency in carrying out the task and in using any necessary equipment. (3-29-10)

vi. The aide has been instructed on how to specifically carry out the delegated task with the specific client. (3-29-10)

vii. The aide knows the precautions, signs, and symptoms for the particular client that would indicate the need to seek assistance from the occupational therapist or occupational therapy assistant. (3-29-10)

c. The supervision of the aide needs to be documented for every client-related activity performed by an aide. Documentation must include information about frequency and methods of supervision used, the content of supervision, and the names and credentials of all persons participating in the supervisory process. (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**025. CONTINUING EDUCATION.**

In order to protect public health and safety and promote the public welfare, the Board has adopted the following continuing education requirement consisting of both continuing education units (CEUs) and professional development units (PDUs): (3-29-10)

**01. Requirement.** Every two (2) years, a licensee must complete at least two (2) CEUs ~~recommended by the Idaho Occupational Therapy Association and~~ approved by the Board, along with at least ten (10) Board-approved professional development units (PDUs). The licensee's initial two (2) year period shall begin on the date on which this Board issues the licensee a license and end on the date on which the licensee submits the licensee's second renewal application. Thereafter, the two (2) year period shall begin to run from the date of each renewal application in which the licensee was required to verify the completion of continuing education. (~~3-29-10~~)(    )

a. A CEU is a measurement of the licensee's participation in a Board-approved continuing education activity. One (1) CEU requires ten (10) contact hours of participation in a Board-approved continuing education program, excluding meals and breaks. One (1) contact hour equals one (1) clock hour for purpose of obtaining CEUs.

(3-29-10)

**b.** A PDU is a measurement of the licensee's participation in a professional development activity. One (1) contact hour of participation in Board-approved professional development activity equals one (1) PDU, one (1) academic credit equals ten (10) PDUs, and one (1) CEU equals ten (10) PDUs. If a licensee counts a CEU towards fulfilling the PDU requirement in a given two-year (2) period, the CEU unit will not count towards fulfilling the CEU requirement. Accepted PDU activities and their associated PDU values are set forth in the PDU Activities Chart at pages 14-17 of the NBCOT Certification Renewal Handbook, 2009 edition as incorporated by reference in Section 004. (3-29-10)

**02. Verification.** The licensee must verify to the Board, as part of the annual license renewal process, that the licensee is in compliance with the continuing education requirement. (3-29-10)

**03. Courses and Activities.** At least one (1) CEU and five (5) PDUs must directly relate to the delivery of occupational therapy services. The remaining PDUs and CEUs must be germane to the practice of occupational therapy and relate to other areas of a licensee's practice. A licensee may take online or home study courses, as long as a course completion certificate is provided. (3-29-10)

**a.** CEUs and PDUs acceptable to the Board include, but are not limited to, programs or activities sponsored by the American Occupational Therapy Association (AOTA) or the Idaho Occupational Therapy Association (IOTA); post-professional coursework completed through any approved or accredited educational institution that is not part of a course of study leading to an academic degree; or otherwise meet all of the following criteria: (3-29-10)

i. The program or activity contributes directly to professional knowledge, skill, and ability; (3-29-10)

ii. The program or activity relates directly to the practice of occupational therapy; and (3-29-10)

iii. The program or activity must be objectively measurable in terms of the hours involved. (3-29-10)

**b.** Partial credit will not be given for CEUs and PDUs. (3-29-10)

**c.** The delivery of occupational therapy services may include: models, theories or frameworks that relate to client/patient care in preventing or minimizing impairment, enabling function within the person/environment or community context. (3-29-10)

**d.** Other activities may include, but are not limited to, occupation based theory assessment/interview techniques, intervention strategies, and community/environment as related to one's practice (3-29-10)

**04. Carry Over and Duplication.** CEUs and PDUs cannot be carried over to the next reporting period. The same course taken more than once during a reporting cycle will only be counted once. (3-29-10)

**05. Documentation.** A licensee need not submit documentation of CEUs and PDUs when the licensee renews a license. However, a licensee must maintain documentation verifying that the licensee has completed the continuing education requirement for a period of four (4) years. A licensee must submit the verification documentation to the Board if the licensee is audited by the Board. A percentage of occupational therapists and certified occupational therapy assistants will be audited every year. (3-29-10)

**a.** Documentation for all activities must include licensee's name, date of activity or when course was completed, provider name, course title, description of course/activity, and number of PDUs and CEUs. (3-29-10)

**b.** Records showing participation in each professional development activity must be maintained by the licensee. Acceptable documentation for specific activities includes: (3-29-10)

i. Continuing education course work. The required documentation for this activity is a certificate or documentation of attendance. (3-29-10)

- ii. In-service training. The required documentation for this activity is a certificate or documentation of attendance. (3-29-10)
  - iii. Professional conference or workshop. The required documentation for this activity is a certificate or documentation of attendance. (3-29-10)
  - iv. Course work offered by an accredited college or university, provided that the course work is taken after the licensee has obtained a degree in occupational therapy, and the course work provides skills and knowledge beyond entry-level skills or knowledge. The required documentation for this activity is a transcript. (3-29-10)
  - v. Publications. The required documentation for this activity is a copy of the publication. (3-29-10)
  - vi. Presentations. The required documentation for this activity is a copy of the presentation or program listing. Any particular presentation may be reported only once per reporting period. (3-29-10)
  - vii. Interactive online courses. The required documentation for this activity is a certificate or documentation of completion. (3-29-10)
  - viii. Development of instructional materials incorporating alternative media such as video, audio and/or software programs to advance professional skills of others. The required documentation for this activity is a program description. The media/software materials must be available if requested during audit process. (3-29-10)
  - ix. Professional manuscript review. The required documentation for this activity is a letter from publishing organization verifying review of manuscript. A maximum of ten (10) hours is allowed per reporting period for this category. (3-29-10)
  - x. Guest lecturer for occupational therapy related academic course work (academia not primary role). The required documentation for this activity is a letter or other documentation from instructor. (3-29-10)
  - xi. Serving on a professional board, committee, disciplinary panel, or association. The required documentation for this activity is a letter or other documentation from the organization. A maximum of ten (10) hours is allowed per reporting period for this category. (3-29-10)
  - xii. Self study of cassette, tape, video tape, or other multimedia device, or book. The required documentation for this activity is a two (2) page synopsis of each item written by the licensee. A maximum of ten (10) hours is allowed per reporting period for this category. (3-29-10)
  - xiii. Level II fieldwork direct supervision of an occupational therapy student or occupational therapy assistant student by site designated supervisor(s). The required documentation for this activity is a name of student(s), letter of verification from school, and dates of fieldwork. A maximum of ten (10) hours per supervisor is allowed per reporting period for this category. (3-29-10)
- 06. Exemptions.** A licensee may request an exemption from the continuing education requirement for a particular two-year (2) period under the following circumstances. The licensee must provide any information requested by the Board to assist in substantiating the licensee's need for a claimed exemption: (3-29-10)
- a. During the continuing education period the licensee was residing in another country for one (1) year or longer, reasonably preventing completion of the continuing competency requirements; (3-29-10)
  - b. The licensee was absent from Idaho because of military service for a period of one (1) year or longer during the continuing education period, preventing completion of the continuing competency requirements; or (3-29-10)
  - c. The licensee should be exempt from the continuing competency requirements for reasons of health or other good cause. (3-29-10)

# IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

## 24.10.01 - RULES OF THE STATE BOARD OF OPTOMETRY

DOCKET NO. 24-1001-1201

### 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 54-1509, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

The State Board of Optometry is changing its rules to update, clarify and simplify Board procedures and processes. They also make changes based upon current industry standards and strike outdated language.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the February 1, 2012 Idaho Administrative Bulletin, [Vol. 12-2, Page 21](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at 208 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W State  
Boise, ID 83702  
(208) 334-3233 Ph. (208) 334-3945 fax

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#### THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-1001-1201

##### 150. MEETING OF THE BOARD (RULE 150).

~~Notice of all meetings not having been announced at the preceding meeting shall be given to each member of the~~

~~Board by the secretary two (2) weeks in advance of such meeting. Such notice shall be in writing informing each member as to the time, place, and purpose of the meeting. In the event that written notice cannot be given two (2) weeks in advance, the chairman may instruct the secretary to notify each member of the Board either by telephone or telegraph as to the time, place and purpose of the meeting and any Board member who attends or participates in the meeting shall be deemed to have waived any objection to any notice required by the rules. The Board shall meet at least annually and at other such times and places as designated by the Chairman or upon written request of any two members of the Board. All meetings shall be held in accordance with the Idaho Open Meeting Law, Chapter 23, Title 67, Idaho Code.~~ (7-1-93)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**175. METHOD OF APPLICATION-EXAMINATION OF APPLICANTS (RULE 175).**

Applications for license shall be made on forms approved by the Board ~~of Examiners which may be obtained and which must be filed in the office of Occupational License Bureau at Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702.~~ (3-30-01)(\_\_\_\_)

**01. Application Fee.** The application *fee* must be accompanied by: (7-1-93)(\_\_\_\_)

a. The required fee. (7-1-93)

b. ~~An unmounted photograph three inches by three inches (3" x 3"), head and shoulders only~~ A passport style photograph, taken within one (1) year prior to the date of making the application. (7-1-93)(\_\_\_\_)

c. A complete transcript of credits from any college of optometry attended. (7-1-93)

d. A photocopy of any diplomas granted by any college of optometry. (7-1-93)

e. A copy of certified results establishing successful passage of the required examinations. (3-30-01)

**02. Application Review.** Only fully completed applications accompanied by appropriate documents shall be reviewed for licensure. (3-30-01)

**03. Exam Content.** The written and the practical portions of the Idaho examination shall be all parts of the National Board of Examiners in Optometry Examination (NBEOE) and ~~the "Treatment and Management of Ocular Diseases" examination approved by the Association of Regulatory Boards of Optometry, Inc. (ARBO) the Board approved jurisprudence examination.~~ A passing grade for the NBEOE shall be that established by the test provider. The passing grade for the jurisprudence examination shall be seventy-five percent (75%). A passing score on both all examinations shall be necessary before obtaining to qualify for a license to practice Optometry in Idaho. (3-30-01)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**200. APPROVAL OF SCHOOLS OF OPTOMETRY (RULE 200).**

The State Board of Optometry recognizes as reputable and in good standing the schools and colleges of optometry which have met the standards set by the Accreditation Council on Optometric Education ~~of the American Optometric Association, or its successor agency,~~ a list of which may be obtained from the secretary of the Board or from the office of the Bureau of Occupational Licenses in Boise. (7-1-93)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**300. CONTINUING EDUCATION IN OPTOMETRY (RULE 300).**

**01. Hours Required, Advance Approval.** Each optometrist licensed by the state of Idaho shall attend in each twelve (12) month period preceding the renewal of a license to practice optometry in Idaho, a minimum of twelve (12) full hours of post-graduate optometric education courses or meetings approved in advance by the Board of Optometry or post-graduate study sessions or seminars at an accredited school or college of optometry. In addition, all Council on Optometric Practitioners Education (COPE) approved courses ~~would be~~ are approved for continuing education credit. If an optometrist attends or plans to attend a course of study or seminar which has not been approved in advance, he may petition the Board for approval of that educational course of study, setting forth a description of the course. The Board may, in its discretion, approve the course upon review of the material submitted either in advance or after completion of the course. (8-24-94)( )

**02. Additional Hours Required to Use Therapeutic Pharmaceutical Agents.** Each optometrist licensed by the state of Idaho to use therapeutic pharmaceutical agents shall attend in each twelve (12) month period preceding the renewal of a license to practice optometry in Idaho, a minimum of six (6) additional full hours of post-graduate optometric courses or meetings approved in advance by the Board of Optometry or post-graduate study sessions or seminars at an accredited school or college of optometry. This six (6) hours of continuing education must be in courses involving ocular pharmacology and/or advanced ocular disease and are in addition to the twelve (12) hours of continuing education required under Subsection 300.01. (7-1-93)

**03. Correspondence/Home Study Courses/Observation.** The Board allows credit for correspondence courses, individual home study and observation that is germane to the practice of optometry. No more than six (6) hours of continuing education shall be permitted each year in correspondence courses or other continuing education obtained from "home study" courses or observation. (3-30-07)

**04. Waiver of Requirements.** The Board of Optometry shall waive the continuing education requirement for the first license renewal after initial licensure. The Board of Optometry may, upon application, waive the requirements of this rule in cases involving illness, unusual circumstances interfering with the optometrist's ability to practice or inability to conform to the rules due to military duty. (3-15-02)

**05. Renewal Application Form.** Each licensed Idaho optometrist will be furnished a license renewal application form by the State Board of Optometry on which each optometrist shall attest on their annual license renewal application that they have satisfied the continuing education requirements. False attestation of satisfaction of the continuing education requirements on a renewal application shall subject the licensee to disciplinary action. (3-20-04)

**06. Audit.** The Board may conduct audits to confirm that the continuing education requirements have been met. In the event a licensee fails to provide the Board with acceptable documentation of the hours attested to on the renewal application, the license will not be renewed. (3-20-04)

**07. Documentation of Attendance.** It shall be necessary for each licensed Idaho optometrist to provide documentation verifying attendance or completion of continuing education by securing authorized signatures, ~~or other~~ documentation, or electronic verification from the course instructors, providers, or sponsoring institution substantiating any hours attended by the licensee. This documentation must be maintained by the licensee and provided upon request by the Board or its agent. (3-20-04)( )

**08. Excess Hours.** Continuing education hours, not to exceed six (6) hours, accumulated during the twelve (12) months immediately preceding a license renewal may be applied toward meeting the continuing education requirement for the following license renewal. Excess hours may be used only during the next renewal period and may not be carried forward more than one (1) year. (3-30-07)

**301. -- 324. (RESERVED)**

**325. CODE OF ETHICS (RULE 325).**

**01. Patient's Visual Welfare.** The licensed optometrist shall keep the patient's visual welfare

uppermost in his consideration at all times and promote the best methods of care for the visual needs of mankind. (7-1-93)

**02. Confidentiality.** The optometrist shall preserve information concerning his patients in confidence and not release that information unless authorized by the patient or their lawful agent. An optometrist may, however, supply information of an otherwise confidential or privileged nature when lawfully subpoenaed to testify at a deposition or hearing in any proceeding before the Board of Optometry, or at any other time and place ordered by a court of law. (7-1-93)(    )

**03. Conduct of Practice.** The optometrist shall conduct his practice in a dignified and professional manner and in keeping with the mode of practice of a professional person entrusted with the care of the health of citizens of this state and shall abide by the rulings of the Board of Optometry. (7-1-93)

**04. Unprofessional Conduct.** In order to define what constitutes unprofessional conduct, the board sets forth certain prohibited actions. In conducting his practice, an optometrist must not: (3-30-07)

**a.** Practice optometry in any manner other than as a professional person in an individual capacity, or in partnership with or associate with other licensed health care professionals. An optometrist may be a stock holder in and practice as a member of a professional service corporation with other licensed health care professionals as authorized by Title 54, Chapter 15, Idaho Code, but the optometrist must list his individual name as well as any name selected for the professional service corporation on any letterheads, telephone directories, office or building directories, or other places where the general public might be advised of the fact that the individual is practicing optometry, as required by these rules. (3-30-07)

**b.** Use either “Cappers” or “Steerers” or accept a split or divided fee for the purpose of obtaining patients or use solicitors or agents for the purpose of securing patients or conducting eye examinations or furnishing optometric services. (7-1-93)

**c.** Allow his prescription files and records to be used by any unlicensed person, firm, or corporation not under the direct control of that optometrist for the practice of optometry. (7-1-93)(    )

**d.** Fail to perform services for which fees have been received. (7-1-93)

**e.** File false reports of services performed or fees rendered. (7-1-93)

**f.** Permit the use of his name or professional title by or in conjunction with any person not an optometrist, or any firm, company, corporation or military association which illegally practices or in any manner holds himself or itself out to the public as being entitled to practice the profession of optometry when not licensed to do so under the law of Idaho or which uses the title “Optometric Services” in such a manner in advertising as to convey to the public the impression that the individual or corporation is entitled to practice optometry or furnish optometric advice or services when not so authorized by law. (7-1-93)

~~**g.** Enter into or continue in a contract, agreement, or understanding of any kind, or engage in any course of conduct with any person, firm or corporation, or their agents, whereby said optometrist expressly or impliedly agrees. (7-1-93)~~

~~**i.** To refer the patient back to said person, firm, or corporation referring the patient for any subsequent service or receipt of ophthalmic material. (7-1-93)~~

~~**ii.** That if any patient is referred by any person, firm or corporation to the optometrist, the optometrist will refrain from supplying to the patient any ophthalmic materials. (7-1-93)~~

~~**h.** Directly or indirectly give any person, association, firm or corporation, or their agents, anything of pecuniary benefit or value as consideration for the referral of any patient to said optometrist. (7-1-93)~~

**326. -- 424. (RESERVED)**



**425. RULES DEFINING GROSS INCOMPETENCE (RULE 425).**

In order to protect the public, the Board of Optometry defines as “gross incompetence” any behavior or practice on the part of the licensed optometrist which demonstrates a lack of competence with respect to discharging professional obligations or duties which might result in injury or damage to a patient whether such injury or damage actually occurs or not and in particular, the Board defines as “gross incompetence” any of the following: (11-6-93)

**01. Failure to Meet Prevailing Standards.** Failure to meet prevailing standards, or willful rendering of substandard care, either individually or as part of a third party reimbursement agreement or by other agreement. (7-1-97)

**02. Failure to Meet Prevailing Standards in the Referral of Any Patient Who Is Suffering From Any Apparent or Suspected Pathological Condition.** A failure to meet prevailing standards in the referral of any patient who is suffering from any apparent or suspected pathological condition to a person competent and licensed to properly treat or diagnose the condition. (7-1-93)

**03. Employment of Techniques or Methods of Practice.** Employment of techniques or methods of practice in treating or prescribing for a patient when he does not have proper training in the technique or methods of practice. (7-1-93)

**04. Failure to Advise Patient of Possible Danger When a Lens Not Meeting Impact Resistance Standards of F.D.A.** Failure to advise his patient of possible danger when a lens does not meeting impact resistance standards of F.D.A. Regulation, ~~Sec. 3.84,~~ 21 CFR 801.410, and is provided ~~for to~~ the patient. (7-1-93)(    )

**05. Failure to Provide Follow-Up Care.** Failure to provide follow-up care according to prevailing standards. (11-6-93)

**06. Displaying Gross Ignorance or Demonstrating Gross Inefficiency.** Displaying gross ignorance or demonstrating gross inefficiency in the care of a patient. (7-1-93)

**07. Failure to Verify the Specifications of All Lenses.** Failure to verify the specifications of all lenses provided by him. (11-6-93)

**08. Failing to Perform Tests and Record Findings.** In the course of an examination of a patient, failure to perform tests and record findings in a manner consistent with prevailing standards of optometric care. (11-6-93)

**09. Using Pharmaceutical Agents.** Using pharmaceutical agents in the practice of optometry without having attended sufficient training programs or schools and acquiring the knowledge necessary to use the drugs in a competent manner. (11-6-93)

**10. Illegal Prescription Sale, Administration, Distribution, or Use of Drugs.** Prescribing, selling, administering, distributing, giving, or using drugs legally classified. Prescribing, selling, administering, distributing, giving, or using drugs legally classified as a controlled substance or as an addictive or dangerous drug for other than accepted diagnostic or therapeutic purposes. (7-1-97)

**11. Disciplinary Action or Sanctions.** Disciplinary action or sanctions taken by another state, jurisdiction, peer review body or a professional association or society against an optometrist for acts or conduct similar to acts or conduct which would constitute grounds for action as defined under “Rules of the Idaho Board of Optometry.” (7-1-97)

**12. Sanitary Office.** ~~Has failed~~ Failure to maintain sanitary office conditions, equipment, and use appropriate techniques and procedures. (7-1-97)(    )

**13. Failure to Release Prescription.** Failure to release either a spectacle or contact lens prescription as required by Federal law. (3-29-10)

**14. Sufficient Training or Education. Performing procedures without having successfully completed**

education, instruction or certification. ( )

426. -- 449. (RESERVED)

**450. ~~CONTENTS OF~~ PRESCRIPTIONS FOR SPECTACLES AND CONTACT LENSES (RULE 450).**

Eye glasses and contact lenses, including plano or cosmetic contact lenses, may only be dispensed upon a current prescription issued by an optometrist or medical physician. Every prescription written or issued by an optometrist practicing in Idaho shall contain at least the following information: (7-1-93)( )

**01. Prescription for Spectacles.** Prescriptions for spectacles must contain the following: (7-1-93)

**a.** Sphere, cylinder, axis, prism power and additional power, if applicable; and (3-30-07)

**b.** The standard expiration date of the prescription must be at least one (1) year from date the prescription was originally issued. (3-29-10)

**02. All Prescriptions for Rigid Contact Lenses.** All prescriptions for rigid contact lenses must contain at least the following information: (7-1-93)

**a.** Base curve; (7-1-93)

**b.** ~~Peripheral curve or curves including width~~ Lens manufacturer or "brand" name; (7-1-93)( )

**c.** Overall diameter; (7-1-93)

**d.** ~~Optical zone diameter~~ Lens material; (7-1-93)( )

**e.** Power; and (3-30-07)

**f.** The standard expiration date of the prescription must be at least one (1) year from date the prescription was originally issued. A shorter prescription period may be allowed when based upon a documented medical condition. (3-29-10)

**03. All Prescriptions for Soft Contact Lenses.** All prescriptions for soft contact lenses must contain at least the following information: (7-1-93)

**a.** Lens manufacturer or "brand" name; (7-1-93)

**b.** Series or base curve; (7-1-93)

**c.** Power; (7-1-93)

**d.** Diameter, if applicable; (7-1-93)

**e.** Color, if applicable; and (7-1-93)

**f.** The standard expiration date of the prescription is one (1) year from date the prescription was originally issued. A shorter prescription period may be allowed when based upon a documented medical condition. (3-29-10)

**04. Alteration of Prescriptions. A person may not alter the specifications of an ophthalmic lens prescription without the prescribing doctor's consent.** ( )

**05. Expired Contact Lens Prescription. A person may not fill an expired contact lens prescription.** ( )

**06. Fitting and Dispensing Contact Lenses.** ( )

- a.** Contact lenses may be fitted only by an optometrist, or licensed physician. ( )
- b.** An ophthalmic dispenser may dispense contact lenses on a fully written contact lens prescription issued by an optometrist or licensed physician. ( )
- c.** Notwithstanding Subsection 450.05.b., an optometrist, or licensed physician who issues a contact lens prescription remains professionally responsible to the patient. ( )

**451. -- 474. (RESERVED)**

**475. PATIENTS RECORDS (RULE 475).**

**01. Optometrist Shall Keep a Complete Record of All Patients Examined.** Every optometrist practicing in the state of Idaho shall keep a complete record of all patients examined by him or for whom he has adapted optical accessories, including copies of prescriptions issued to the patient and copies of statements of charges delivered or provided to the patient. All such records shall be maintained in an orderly and accessible manner and place and shall be maintained for at least five (5) years following the optometrist's last professional contact with the patient. Failure to maintain such records is deemed to be unprofessional conduct and constitutes gross incompetence in the handling of the patient's affairs. (7-1-93)

**02. Prescription Files.** The prescription files and all records pertaining to the practice of optometry shall be maintained as the sole property of the optometrist and not be distributed to any unlicensed person except as required by law or when lawfully subpoenaed in a criminal or civil proceeding in court, or subpoenaed for presentation at a deposition or hearing authorized by the Board of Optometry. (7-1-93)

**03. Storage of Patient Records.** Storage of patient records must be in compliance with rules in accordance with Health Insurance Portability and Accountability Act (HIPAA) including that patient records must be stored in an area inaccessible to patients. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**575. FEES (RULE 575).**

- 01. Annual Renewal Fee.** Annual renewal fee for license - seventy-five dollars (\$75). (7-1-97)
- 02. Annual *Optometry* Fund Fee.** Annual *optometry* fund fee - seventy-five dollars (\$75). (7-1-97)( )
- 03. License Application Fee.** License application fee - one hundred dollars (\$100). (7-1-93)
- 04. Certificate to Obtain and Use Pharmaceutical Agents Fee.** Certificate to obtain and use pharmaceutical agents fee - ten dollars (\$10). (3-30-01)

**576. -- 599. (RESERVED)**

**600. BOARD CERTIFICATION OF OPTOMETRIST AUTHORIZED TO OBTAIN AND USE PHARMACEUTICAL AGENTS (RULE 600).**

**01. The Right to Obtain and Use Topically Applied Diagnostic Pharmaceutical Agents.** The right to obtain and use topically applied diagnostic pharmaceutical agents for use in diagnosis of another in the practice of optometry as defined by Section 54-1501, Idaho Code, is subject to the following conditions set out below: (7-1-93)

- a.** Optometrists who have obtained a certificate from the Board of Optometry authorizing them to

obtain and use topically applied diagnostic pharmaceutical agents shall obtain, from pharmacists licensed by the state of Idaho, or from any other source, and use only those agents listed below: (7-1-93)

i. ~~Anesthetics: All medications for use in the diagnosis of conditions of the human eye and/or eyelid.~~ (7-1-93)( )

(1) ~~Proparacaine 0.5%;~~ (7-1-93)

(2) ~~Tetraacaine 0.5%;~~ (7-1-93)

(3) ~~Benoxinate 0.4% e fluorescein.~~ (7-1-93)

ii. ~~Cycloplegics: All over-the-counter agents.~~ (7-1-93)( )

(1) ~~Tropicamide 0.5%;~~ (7-1-93)

(2) ~~Cyclopentolate 0.5%;~~ (7-1-93)

(3) ~~Atropine 0.5%.~~ (7-1-93)

iii. ~~Mydriasis Reversal Agents: Such other diagnostic pharmaceutical agents as may be approved by the Board of Optometry.~~ (7-1-93)( )

(1) ~~Dapiprazole HCl 0.5%.~~ (7-1-93)

**b.** The Board of Optometry shall issue a certificate to obtain and use the diagnostic drugs specifically identified and listed in this rule to any optometrist licensed to practice in Idaho who complies with both the minimum educational requirements in the subject of general and ocular pharmacology and the minimum continuing educational requirements set out below: (7-1-93)

i. Each optometrist certified to obtain and use topically applied pharmaceutical agents shall have completed courses totaling fifty-five (55) hours of actual classroom instruction in general and ocular pharmacology and emergency medical care given by an institution approved by the Council on Post Secondary Accreditation of the U.S. Department of Education or an instructor accredited and employed by such institution and which have been approved by the Board of Optometry. (7-1-93)

ii. Each optometrist certified to obtain and use topically applied pharmaceutical agents shall also have completed a refresher course in cardiopulmonary resuscitation (CPR), emergency medical care provided by the Emergency Medical Services Bureau, or equivalent program either approved or provided by the Board of Optometry, within a two (2) year period preceding issuance of the certificate by the Board of Optometry. (7-1-93)

iii. In order to maintain the certificate issued by the Board, each certified optometrist must complete a refresher course in ~~emergency medical care~~ CPR described in Subsection 600.01.b.ii. above once during each two (2) year period following certification and shall list and describe the course attended and the dates of attendance upon a license renewal application form filed pursuant to Section 300. (7-1-93)( )

**c.** In order to implement this rule, the Board of Optometry may designate and approve courses of instruction given by those institutions or instructors described in Subsection 600.01.b.i. above which may be necessary to provide practicing optometrists who have received less than fifty-five (55) hours of actual classroom instruction in general and ocular pharmacology in optometry school with the opportunity to meet the requirements of this rule. (7-1-93)

**02. The Right to Prescribe, Administer and Dispense Therapeutic Pharmaceutical Agents.** The right to prescribe, administer and dispense therapeutic pharmaceutical agents in the practice of optometry as defined by Section 54-1501, Idaho Code, is subject to the following conditions set out below: (11-6-93)

**a.** Optometrists who have obtained a certificate from the Board of Optometry authorizing them to

prescribe, administer and dispense therapeutic pharmaceutical agents shall obtain, from pharmacists licensed by the State of Idaho, or from any other source, and use only those agents listed below: (11-6-93)

- i. All medications for use in the treatment of the human eye and/or eyelid. (7-1-97)
- ii. All over-the-counter agents. (11-6-93)
- iii. Such other therapeutic pharmaceutical agents as may be approved by the Board of Optometry. (11-6-93)

**b.** The Board of Optometry shall issue a certificate to prescribe, administer and dispense the therapeutic medications to any optometrist licensed to practice in Idaho who complies with Subsection 600.01 and both the minimum educational and clinical experience requirements in the subject of ocular pharmacology and therapeutics and the minimum continuing educational requirements set out below: (7-1-97)

i. Completion of a minimum of one hundred (100) hours of actual classroom and clinical instruction in ocular pharmacology and therapeutics courses given by an institution or organization approved by the Council on Post-Secondary Accreditation of the U.S. Department of Education, or an Instructor employed by such institution, which have been approved by the Board of Optometry. (7-1-93)

ii. Successful passage of the "Treatment and Management of Ocular Diseases" section of the optometrist examination approved by the Association of Regulatory Boards of Optometry, Inc. (ARBO) or its equivalent as approved by the Board. (~~3-30-01~~)(    )

## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.12.01 - RULES OF THE IDAHO STATE BOARD OF PSYCHOLOGIST EXAMINERS**

**DOCKET NO. 24-1201-1201**

#### **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 54-2305, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

The Idaho State Board of Psychologist Examiners is updating this rule to clarify continuing education obtained through workshops, classes, training experiences, and teleconferences and to set the number of continuing hours allowed.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 general or dedicated funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rule is simple in nature and was discussed at a noticed meeting open to the public.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at 208 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W State  
Boise, ID 83702  
(208) 334-3233 Ph.  
(208) 334-3945 fax

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-1201-1201**

**402. GUIDELINES FOR APPROVAL OF CONTINUING EDUCATION CREDITS (RULE 402).**

**01. Continuing Education Credit.** Continuing education credit will be given to formally organized workshops or classes with an attendance roster and preassigned continuing education credit offered in association with or under the auspices of: (7-1-93)

- a. Regionally accredited institutions of higher education. (7-1-93)
- b. The American Psychological Association. (7-1-93)
- c. A Regional Psychological Association. (7-1-93)
- d. A State Psychological Association. (7-1-93)
- e. Credit will be given for the number of credit hours preauthorized by the sponsoring agency with no upper limit on the number of hours. (7-1-93)

**02. Credit for International, National and Regional Meetings of Psychological Organizations.** Six (6) hours of continuing education credit will be allowed for documented attendance at international, national and regional meetings of psychological organizations. (7-1-93)

**03. Credit for Other Relevant Workshops, Classes or Training Experiences.** Other relevant workshops, classes or training experiences when not offered, approved, or provided by an entity in Subsection 402.01, may receive up to six (6) hours of credit per experience provided they are conducted by a licensed or reputable psychologist or other mental health professional. Each documented hour of training experience counts as one (1) hour of continuing education experience. ~~A maximum of six (6) hours of this type of experience may be approved.~~ (7-1-93)(    )

**04. Presentation of Papers.** Presentation of papers at international, national, regional or state psychological or other professional associations may be counted as equivalent to six (6) hours per event. Only actual presentation time may be counted; preparation time does not qualify for credit. The licensee must provide the Board with a letter from a sponsor, host organization, or professional colleague, copy of the program, and a summary of the evaluations from the event. (3-29-10)

**05. Self-Study, Lectures or Public or Professional Publications and Presentations.** The Board also recognizes the value of self-study, lectures or public or professional publications and presentations (including for example, in the case of the university faculty, preparation of a new course). Therefore, the Board will allow credit for six (6) hours of individual study per year. (7-1-93)

a. Self-Study. The reading of a publication may qualify for credit with proper documentation verifying completion. A licensee seeking credit for reading a publication must submit results from a test on the information contained within the publication. If a test is not available, the licensee must seek pre-approval of the Board. (3-29-10)

b. Professional publications. Publication activities are limited to articles in professional journals, a chapter in an edited book, or a published book. The licensee must provide the Board with a copy of the cover page of the article or book in which the licensee has been published. For chapters of an edited book, licensees must submit a copy of the table of contents. (3-29-10)

**06. Board Assessment of Continuing Education Activities.** The Board of Psychologist Examiners may avail itself of help and consultation from the American Psychological Association or the Idaho Psychological Association in assessing the appropriateness of continuing education activities. (3-29-10)

**07. On-Line Education.** A maximum of ten (10) on-line continuing education hours relevant to the practice of psychology may be counted during each reporting period. (3-29-10)

**a.** On-line continuing education hours must be offered by or obtained from regionally accredited institutions of higher education or approved by the American Psychological Association. (3-29-10)

**b.** The licensee must provide the Board with a copy of the certification, verified by the authorized signatures from the course instructors, providers, or sponsoring institution, substantiating any hours completed by the licensee. (3-29-10)

**08. Teleconferences.** ~~A maximum of six (6) continuing education hours may be counted through teleconference education during each reporting period.~~ To qualify for credit, teleconferences must feature an interactive format. Interactive conferences are those that provide the opportunity for participants to communicate directly with the instructor or that have a facilitator present at the conference site. The licensee must provide the Board with a copy of the certificate, or a letter signed by course instructors, providers, or sponsoring institution, substantiating any hours attended by licensee. ~~(3-29-10)~~( )

**a.** When offered, approved, or provided by entities in Subsection 402.01, the number of hours that may be counted during each reporting period is not limited. ( )

**b.** When not offered, approved, or provided by an entity in Subsection 402.01, a maximum of six (6) hours may be counted during each reporting period. ( )



## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.14.01 - RULES OF THE STATE BOARD OF SOCIAL WORK EXAMINERS**

**DOCKET NO. 24-1401-1201**

#### **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 54-3204, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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 Board of Social Work Examiners is changing its rules to clarify the definition of a relative for purposes of the code of conduct. The proposed rule changes clarify independent practice, and supervision requirements through the creation of a new supervision section. The rule changes require renewal of a Supervisor registration, clarify inactive licenses, and update the examination process. Finally, changes are needed to the code of professional conduct to clarify appropriate relationships between a licensee and client.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 rules were discussed during scheduled, noticed board meetings.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at 208 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W State  
Boise, ID 83702  
(208) 334-3233 Ph. (208) 334-3945 fax

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-1401-1201**

**010. DEFINITIONS (RULE 10).**

**01. Board.** The State Board of Social Work Examiners as prescribed in Section 54-3202, Idaho Code. (7-1-93)

**02. Bureau.** The Bureau means the Bureau of Occupational Licenses, as prescribed in Sections 54-3204 and 67-2602, Idaho Code. (3-13-02)

**03. Psychotherapy.** Treatment methods using a specialized, formal interaction between a Clinical Social Worker and an individual, couple, family, or group in which a therapeutic relationship is established, maintained, or sustained to understand unconscious processes, intrapersonal, interpersonal, and psychosocial dynamics, and the diagnosis and treatment of mental, emotional, and behavioral disorders, conditions, and addictions. (3-20-04)

**04. Relative.** For the purposes of these rules, a relative is a person's spouse, parent, child, or sibling, regardless of whether the relation is by blood, through marriage, or by law. ( )

**045. Supportive Counseling.** Supportive counseling by a social worker means a method used by social workers to assist individuals, couples, families, and groups in learning how to solve problems and make decisions about personal, health, social, educational, vocational, financial, and other interpersonal concerns. This help in the maintenance of adaptive patterns is done in the interview through reassurance, advice giving, information providing, and pointing out client strengths and resources. Supportive counseling does not seek to reach unconscious material. (3-20-04)

**(BREAK IN CONTINUITY OF SECTIONS)**

**201. PRACTICE OF SOCIAL WORK (RULE 201).**

**01. Baccalaureate Social Work.** The application of social work theory, knowledge, methods, and ethics to restore or enhance social or psychosocial functioning of individuals, couples, families, groups, organizations, and communities. Baccalaureate social work is a generalist practice that includes assessment, planning, intervention, evaluation, case management, information and referral, supportive counseling, supervision, and consultation with clients. Baccalaureate social work also includes advocacy, education, community organization, and the development, implementation and administration of policies, programs, and activities. Bachelor level social workers are prohibited from performing psychotherapy. Baccalaureate social work can include independent practice, but not private practice. (3-20-04)( )

**02. Master's Social Work.** The application of social work theory, knowledge, methods and ethics, and the professional use of self to restore or enhance social, psychosocial or biopsychosocial functioning of individuals, couples, families, groups, organizations, and communities. Master's social work requires the application of specialized knowledge and advanced practice skills in the areas of assessment, treatment planning, implementation and evaluation, case management, information and referral, supportive counseling, supervision and consultation with clients, advocacy, teaching, research, community organization, and the development, implementation, and administration of policies, programs, and activities. Master level social workers who do not hold clinical licensure may provide psychotherapy only under the supervision of a licensed clinical social worker, psychologist, or psychiatrist and in accordance with an approved supervision plan. Master's social work can include independent practice, but not private practice. (3-20-04)( )

**03. Clinical Social Work.** The practice of clinical social work is a specialty within the practice of master's social work and requires the application of specialized clinical knowledge and advanced clinical skills in the areas of assessment, diagnosis, and treatment of mental, emotional, and behavioral disorders, conditions and addictions. Clinical social work is based on knowledge and theory of psychosocial development, behavior, psychopathology, motivation, interpersonal relationships, environmental stress, social systems, and cultural diversity,

with particular attention to person-in-environment. It shares with all social work practice the goal of enhancement and maintenance of psychosocial functioning of individuals, families, and small groups. Clinical social work includes, but is not limited to, individual, couples, family and group psychotherapy, and includes independent and private practice. (3-20-04)

**04. Independent Practice of Social Work.** As defined in Section 54-3207, Idaho Code, independent practice is that practice in which an individual who, wholly or in part, practices social work autonomously with total responsibility for such independent practice. ( )

**045. Private Practice of Social Work.** As defined in Section 54-3207, Idaho Code, is that independent practice in which an individual sets up and maintains responsibility for the contractual conditions of payment with clients, agencies, or institutions. (5-3-03)

**056. Employment of a Social Worker.** A social worker employed directly by a physician, psychologist or other social worker, or by a public or private agency, institution, hospital, nursing home, rehabilitation center, or any similar facility, is not to be considered within the definition of an independent practitioner. Furthermore, a social worker who contracts with an agency or institution that assumes full responsibility for and supervises the services provided to clients is not considered to be a private practitioner. (5-3-03)

~~**06. Supervision.** Supervised experience shall be required for both independent practice status and clinical licensure. Consultative teaching supervision is directed toward enhancement and improvement of the individual's social work values, knowledge, methods, and techniques. A total of three thousand (3,000) hours of supervised social work experience accumulated in not less than two (2) years is required. Actual supervisor contact shall be face-to-face and provided by a qualified and experienced professional working in the same area of practice and must occur on a regular and on-going basis and consist of a minimum of one hundred hours (100) hours. Ratio of supervisor/supervisee shall not exceed two (2) social workers to one (1) supervisor per hour of supervision. Group supervision totaling no more than fifty (50) hours will be allowed for groups of no more than six (6) persons and the allowable credit shall be prorated at the two to one (2 to 1) ratio (total session minutes divided by total supervisees multiplied by two (2) equals maximum allowable credit per supervisee for the session. i.e. an individual attending a one (1) hour group supervisory session consisting of six (6) supervisees shall be allowed twenty (20) minutes of group supervision credit). Supervisors must hold a degree in social work and a current license in good standing, except as noted in Subsection 201.06.e. (4-2-08)~~

~~**a.** Supervision of baccalaureate social workers pursuing licensure as independent practitioners must be provided by a licensed social worker approved to provide independent practice at the baccalaureate, masters, or clinical level. (3-20-04)~~

~~**b.** Supervision of masters social workers pursuing licensure as independent practitioners must be provided by a licensed social worker approved to provide independent practice at the masters or clinical level. (5-3-03)~~

~~**c.** Supervision of master level social workers pursuing licensure as clinical level practitioners must be provided by either a licensed clinical social worker who is registered as a supervisor, a licensed clinical psychologist, a person licensed to practice medicine and surgery who practices in the area of psychiatry, a licensed clinical professional counselor registered as a supervisor by the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists or a licensed marriage and family therapist registered as a supervisor by the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists and must focus on clinical social work as defined. No less than fifty percent (50%) of supervised experience must be provided by a licensed clinical social worker registered as a supervisor. A master level social worker pursuing licensure at the clinical level must document three thousand (3000) hours of supervised practice as follows: (4-7-11)~~

~~**i.** One thousand seven hundred fifty (1,750) hours of direct client contact involving treatment in clinical social work as defined; and (4-7-11)~~

~~**ii.** One thousand two hundred fifty (1,250) hours involving assessment, diagnosis, and other clinical social work as defined. (4-7-11)~~

~~d. Supervision reports shall be submitted from each supervisor directly to the Board within thirty (30) days following each six (6) month period. Failure of the supervisor to submit the required reports in a timely manner may result in the supervisor being restricted by the Board from providing further supervision. (3-20-04)~~

~~07. **Supervised Practice Required.** To be eligible for licensure as an independent practitioner a candidate must: (5-3-03)~~

~~a. Meet the requirements set forth in Subsection 201.06; (4-2-08)~~

~~b. Develop a plan for supervision that must be approved by the Board prior to commencement of supervision. Prior to a change in supervisors, the supervisee must notify the Board and the change must be approved by the Board prior to the commencement of supervision by the new supervisor; and (5-3-03)~~

~~c. Not have more than two (2) supervisors at any given time. (5-3-03)~~

~~08. **Out of State Supervised Experience.** The Board may consider supervised experience obtained outside the state of Idaho submitted for Idaho license purposes. Supervised experience must be provided by a licensed clinical social worker, licensed marriage and family therapist, licensed clinical psychologist, or a person licensed to practice medicine and surgery who practices in the area of psychiatry. No less than fifty percent (50%) of supervised experience must be provided by a licensed clinical social worker. The applicant must meet the other requirements of supervised practice as set forth in these rules. (4-2-08)~~

**202. -- 209. (RESERVED)**

**210. SUPERVISION (RULE 210).**

**01. Generally Applicable Supervision Requirements.** All supervised experience, as set forth in this section, must meet the following requirements: ( )

**a. Supervision must be consultative-teaching supervision which is directed toward enhancement and improvement of the individual's social work values, knowledge, methods, and techniques. ( )**

**b. A minimum of one hundred (100) hours of the required supervision must be face-to-face contact with the supervisor and must occur on a regular and on-going basis. ( )**

**i. A supervisee may count in full all time in a supervisory session where the ratio of supervisor to supervisees does not exceed one (1) supervisor to two (2) social workers. All one hundred (100) hours may be earned in such a one (1) to two (2) setting. ( )**

**ii. Group supervision may count for no more than fifty (50) hours of face-to-face contact. Group supervision may count only where the ratio of supervisor to supervisees does not exceed one (1) supervisor to six (6) supervisees, and the allowable countable time shall be prorated by the following formula: total session minutes divided by total supervisees, multiplied by two (2) equals the maximum allowable countable time per supervisee for the session. i.e. a supervisee attending a one (1) hour group supervisory session consisting of six (6) supervisees shall be allowed twenty (20) minutes of group supervision credit (60 minutes/6 supervisees x 2 = 20 minutes). ( )**

**02. Pursuing Licensure As Independent Practitioners.** Requirements for supervision of baccalaureate or master's social workers pursuing licensure as independent practitioners. ( )

**a. Develop a plan for supervision that must be reviewed and approved by a designated Board member prior to commencement of supervision. ( )**

**b. Complete a minimum of three thousand (3,000) hours of supervised social work experience accumulated in not less than two (2) years but in not more than five (5) years. ( )**

**c. Supervision must be provided by a qualified and experienced licensed social worker with a current license in good standing and approved to pursue independent practice. ( )**

i. For a baccalaureate social worker the supervisor must hold a license at the baccalaureate, masters, or clinical level. ( )

ii. For a masters social worker the supervisor must hold a license at the masters, or clinical level. ( )

iii. Prior to a change in supervisors, the supervisee must notify the Board and the change must be approved by a designated member of the Board prior to the commencement of supervision by the new supervisor. ( )

iv. The supervisee may not have more than two (2) supervisors at any given time. ( )

**03. Pursuing Licensure As Clinical Social Worker.** Requirements for supervision of master's social workers pursuing licensure as clinical social worker. ( )

**a.** Develop a plan for supervision that must be reviewed and approved by a designated Board member prior to commencement of supervision. ( )

**b.** Complete a minimum of three thousand (3,000) hours of supervised social work experience focused on clinical social work and accumulated in not less than two (2) years but in not more than five (5) years as follows: ( )

i. One thousand seven hundred fifty (1,750) hours of direct client contact involving treatment in clinical social work as defined; and ( )

ii. One thousand two hundred fifty (1,250) hours involving assessment, diagnosis, and other clinical social work as defined. ( )

**c.** Fifty percent (50%) of supervised experience must be provided by a licensed clinical social worker registered as a supervisor pursuant to Section 211 of these rules. The remaining fifty percent (50%) of supervision may be provided by one or more of the following: ( )

i. A licensed clinical social worker who is registered as a supervisor pursuant to Section 211; ( )

ii. A licensed clinical psychologist; ( )

iii. A person licensed to practice medicine and surgery who practices in the area of psychiatry; ( )

iv. A licensed clinical professional counselor registered as a supervisor by the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists; or ( )

v. A licensed marriage and family therapist registered as a supervisor by the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists. ( )

**d.** Prior to a change in supervisors, the supervisee must notify the Board and the change must be approved by a designated member of the Board prior to the commencement of supervision by the new supervisor. ( )

**e.** The supervisee may not have more than two (2) supervisors at any given time. ( )

**04. Out-of-State Supervised Experience.** The Board may consider supervised experience obtained outside the state of Idaho submitted for Idaho licensure purposes. Such experience, whether already obtained or planned to be obtained, must be included in the plan for supervision and reviewed and approved by a designated Board member. ( )

**a.** Supervised experience must be provided by one or more of the following: ( )

- i. A licensed clinical social worker; ( )
- ii. A licensed clinical professional counselor; ( )
- iii. A licensed marriage and family therapist; ( )
- iv. A licensed clinical psychologist; or ( )
- v. A person licensed to practice medicine and surgery who practices in the area of psychiatry. ( )
- b. Supervised experience provided by an individual other than a licensed clinical social worker may only satisfy a maximum of fifty percent (50%) of the required hours. ( )
- c. Previous supervised experience must have been obtained within the five year period preceding the submission of the plan for supervision and must have been obtained in compliance with the law and rules of the state in which the experience was obtained. ( )
- d. Prior to a change in supervisors, the supervisee must notify the Board and the change must be approved by a designated member of the Board prior to the commencement of supervision by the new supervisor. ( )
- e. The applicant must meet the other requirements of supervised practice as set forth in these rules. ( )

**20211. SOCIAL WORK SUPERVISOR REGISTRATION (RULE 20211).**

~~Effective January 1, 2007,~~ Idaho licensed social workers shall be registered with the Board in order to provide postgraduate supervision for those individuals pursuing licensure in Idaho as a clinical social worker. (4-11-06)( )

**01. Requirements for Registration.** (3-14-05)

- a. Document at least two (2) years experience as an Idaho licensed clinical social worker. (4-11-06)( )
- b. Have not been the subject of any disciplinary action for five (5) years prior to application for registration. (3-14-05)
- c. Document fifteen (15) contact hours of education in clinical supervisor training as approved by the Board, or if previously registered as a supervisor with the Board, document six (6) hours of education in advanced supervisor training as approved by the Board. (4-2-08)( )

**02. Registration.** A supervisor applicant shall submit to the Bureau a completed application form as approved by the board. (3-14-05)

- a. Upon receipt of a completed application verifying compliance with the requirements for registration as a supervisor, the applicant shall be registered as a supervisor. (3-14-05)
- b. A supervisor's registration shall ~~be~~ remain valid only so long as the individual's clinical social worker license remains current and in good standing. (3-14-05)( )

**03. Renewal.** Subject to the conditions in Paragraph 211.03.c., a supervisor's registration is valid for a term of five (5) years. To renew a supervisor registration, the registered supervisor must submit to the Board a complete application for registration renewal on forms approved by the Board and meet the following requirements: ( )

- a. Hold an active Idaho clinical social worker license which has not been subject to discipline and is

current and in good standing; and ( )

b. Document six (6) hours of continuing education in advanced supervisor training as approved by the Board and completed within the previous five (5) years. ( )

c. For supervisors registered prior to the effective date of this rule subsection 211.03., the following renewal requirements and conditions apply: ( )

i. A registered supervisor who has been registered for at least five (5) years prior to July 1, 2013 must submit a complete application for registration renewal and meet the renewal requirements by July 1, 2015. ( )

ii. A registered supervisor who has been registered for less than five (5) years prior to July 1, 2013 must submit a complete application for registration renewal and meet the renewal requirements by July 1, 2017. ( )

~~203~~12. -- 224. (RESERVED)

225. INACTIVE STATUS (RULE 225).

01. **Request for Inactive Status.** Each person requesting an inactive status *during the renewal of their active license* must submit a written request and pay the *established* inactive license fee. (4-9-09)( )

02. **Inactive License Status.** (4-9-09)

a. All continuing education requirements will be waived for any year or portion thereof that a licensee maintains an inactive license and is not actively practicing or supervising in Idaho (4-9-09)

b. Inactive license renewal notices and licenses will be marked "Inactive." (4-9-09)

c. When the licensee desires active status, he must show acceptable fulfillment of continuing education requirements for the previous twelve (12) months and submit a fee equivalent to the difference between the inactive and active renewal fee. (4-9-09)

d. Licensees shall not practice in Idaho while on inactive status. (4-9-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

350. **EXAMINATIONS, ENDORSEMENT, AND BOARD MEETINGS (RULE 350).**

~~Examinations will be conducted by the board for qualified applicants for social work licensing and board meetings will be held to conduct other business.~~ Applications for examination may be reviewed and approved by a designated Board member upon determination that the applicant meets the qualifications for examination. Approval to sit for examination does not obligate the Board to issue a license if it is later determined that the applicant does not meet the requirements for licensure. (3-20-04)( )

01. **Board Meetings.** Board meetings will be held at least three (3) times each year at such times and places as the board deems necessary. (5-3-03)

02. ~~Exam-Utilized.~~ The Board ~~utilizes~~ *approves* the uniform, nationally standardized examination of the Association of Social Work Boards (ASWB) ~~as the Idaho licensure examination.~~ (5-3-03)( )

a. Bachelor level candidates shall be required to successfully pass the bachelor's examination. (4-2-08)

b. Masters level candidates shall be required to successfully pass the master's examination. (4-2-08)

c. Clinical level candidates shall be required to successfully pass the clinical examination. (5-3-03)

**03. Dates of Exams.** Examination at all levels of social work licensing will be conducted on dates established for national administration. (7-1-93)

**04. Graduation Date to Qualify for Exam.** Candidates for examination who can satisfy the board that they will be graduating at the end of the spring, summer or fall terms of any given year, may qualify for examination *at the established testing period* immediately preceding the date of graduation. ~~(5-24-95)~~( )

~~**05. Exemption from Exam.** An applicant who has been tested for licensure utilizing an acceptable examination will be exempt from the Idaho examination if the applicant received a converted score of seventy (70) based upon a criterion reference examination. (7-1-93)~~

**06.5. Endorsement.** The Board may grant a license to any person who submits a completed application on a form approved by the Board together with the required fees and who: (5-3-03)

a. Holds a current, active social work license, at the level for which a license is being sought, issued by the authorized regulatory entity in another state or country, the certification of which must be received directly by the Board from the issuing agency; and (3-20-04)

b. Has not been disciplined within the last five (5) years, had a license revoked, suspended, restricted, or otherwise sanctioned by any regulatory entity and has never voluntarily surrendered a license; and (5-3-03)

c. Is of good moral character and has not been convicted, found guilty, or received a withheld judgment or suspended sentence for any felony; and (5-3-03)

d. Has successfully passed an examination, as referenced in Subsection 350.02, or an examination provided by the Professional Examination Service (PES) at the clinical social worker and social worker level or the Education Testing Service (ETS) examination; and (5-3-03)

e. Has certified under oath to abide by the laws and rules governing the practice of social work in Idaho and the code of professional conduct. (5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**450. STATEMENT OF PUBLIC POLICY AND CODE OF PROFESSIONAL CONDUCT (RULE 450).**  
The profession of social work is dedicated to serving people; the professional relationship between social workers and clients thus shall be governed by the highest moral and ethical values. The client is in a vulnerable role that extends beyond the time frame of actual services. In both social and professional interactions, this vulnerability shall be taken into consideration whether the person is currently or has been a client. Following is the Code of Professional Conduct: (5-24-95)

**01. The Social Worker's Ethical Responsibility to Clients.** (7-1-93)

a. For the purpose of this Code of Professional Conduct, a client is anyone for whom the social worker provides social work services directly or indirectly through consultations, staffings, or supervision with other professionals. (7-1-93)

b. The social worker shall not commit fraud nor misrepresent services performed. (7-1-93)

c. The social worker shall not solicit the clients of an agency for which they provide services for his private practice. (7-1-93)



**d.** The social worker shall not divide a fee or accept or give anything of value for receiving or making a referral. (7-1-93)

**e.** The social worker shall provide clients with accurate and complete information regarding the extent and nature of the services available to them. (7-1-93)

**f.** The social worker shall terminate service to clients, and professional relationships with them, when such service and relationships are no longer required or in which a conflict of interest arises. (7-1-93)

**g.** A social worker shall not violate a position of trust by knowingly committing any act detrimental to a client. (7-1-93)

**h.** A social worker shall not exploit their professional relationships with clients (or former clients), supervisees, supervisors, students, employees, or research participants, sexually or otherwise. Social workers shall not condone or engage in sexual harassment. Sexual harassment is defined as deliberate or repeated comments, gestures, or physical contacts of a sexual nature that are unwelcomed by the recipient. (7-1-93)

**i.** A social worker shall not engage in romantic or sexual acts with a client or with a person who has been a client within the past three (3) years, with a relative of a client, or with a person with whom the client maintains a close personal relationship when it has the potential to be harmful to the client. A social worker shall not provide social work services to a person with whom he/she has had a romantic or sexual relationship. ~~(7-1-93)~~(\_\_\_\_)

**02. The Social Worker's Conduct and Comportment as a Social Worker.** (7-1-93)

**a.** In providing services, a social worker shall not discriminate on the basis of age, gender, race, color, religion, national origin, mental status, physical disability, social or economic status, political belief, or any other preference or personal characteristic, condition or status. (4-2-08)

**b.** Social workers shall not undertake any activity in which their personal problems are likely to lead to inadequate performance or harm to a client, colleague, student, or research participant. If engaged in such activity when they become aware of their personal problems, they shall seek competent professional assistance to determine whether they should suspend, terminate, or limit the scope of their professional activities. (7-1-93)

**c.** A social worker shall not practice while impaired by medication, alcohol, drugs, or other chemicals. A social worker shall not practice under a mental or physical condition that impairs the ability to practice safely. (4-2-08)

**d.** A social worker shall not repeatedly fail to keep scheduled appointments. (7-1-93)

**e.** The social worker who anticipates the termination or interruption of service to clients shall notify clients promptly and seek the transfer, referral, or continuation of services in relation to the clients' needs and preferences. (7-1-93)

**f.** The social worker shall attempt to make appropriate referrals as indicated by the client's need for services. (7-1-93)

**g.** A social worker shall obtain the client's or legal guardian's informed written consent when a client is to be involved in any research project. A social worker shall explain the research, including any implications. (7-1-93)

**h.** The social worker shall obtain informed consent of clients before taping, recording, or permitting third party observation of their activities. (7-1-93)

**i.** A social worker shall safeguard information given by clients in providing client services. Except when required by law or judicial order, a social worker shall obtain the client's informed written consent before releasing confidential information from the setting or facility except for compelling reasons defined as but not limited to: (7-1-93)

- i. Consultation with another professional on behalf of the client thought to be dangerous to self or others; (7-1-93)
- ii. Duty to warn pursuant to Chapter 19, Title 6, Idaho Code; (5-24-95)
- iii. Child abuse and sexual molestation pursuant to Chapter 16, Title 16, Idaho Code; and (5-24-95)
- iv. Any other situation in accordance with statutory requirements. (7-1-93)
- j.** A social worker shall report any violation of the law or rules, including Code of Professional Conduct, by a person certified under Chapter 32, Title 54, Idaho Code. (7-1-93)

**03. Competent Practice for Social Workers.** All social workers shall practice in a competent manner consistent with their level of education, training and experience. (3-20-04)

- a.** A social worker shall only represent himself and practice within the boundaries of his education, training, licensure level, supervision, and other relevant professional experience. (3-20-04)
- b.** A social worker shall only practice within new areas or use new intervention techniques or approaches after engaging in appropriate study, training, consultation, or supervision. (3-20-04)
- c.** A social worker shall exercise careful judgment, when generally recognized standards do not exist with respect to an emerging area of practice, and take responsible steps to ensure the competence of his practice. (3-20-04)

**04. The Advertising Rules for Social Workers.** No social worker shall disseminate or cause the dissemination of any advertisement or advertising which is any way fraudulent, false, deceptive or misleading. Any advertisement or advertising shall be deemed by the board to be fraudulent, false, deceptive, or misleading if it: (7-1-93)

- a.** Contains a misrepresentation of fact; or (7-1-93)
- b.** Is misleading or deceptive because in its content or in the context in which it is presented it makes only a partial disclosure of relevant facts. More specifically, it is misleading and deceptive for a social worker to advertise free services or services for a specific charge when in fact the social worker is transmitting a higher charge for the advertised services to a third party payor for payment or charges the patient or a third party. It is misleading and deceptive for a social worker or a group of social workers to advertise a social work referral service or bureau unless the advertisement specifically names each of the individual social workers who are participating in the referral service or bureau. (7-1-93)
- c.** Creates false or unjustified expectations of beneficial treatment or successful outcomes; or (7-1-93)
- d.** Fails to identify conspicuously the social worker or social workers referred to in the advertising as a social worker or social workers; or (7-1-93)
- e.** Contains any representation or claims, as to which the social worker, referred to in the advertising, fails to perform; or (7-1-93)
- f.** Contains any representation which identifies the social worker practice being advertised by a name which does not include the terms "social worker," "social work," or some easily recognizable derivation thereof; or (7-1-93)
- g.** Contains any representation that the practitioner has received any license or recognition by the state of Idaho or its authorized agents, which is superior to the license and recognition granted to any social worker who successfully meets the licensing requirements of Chapter 32, Title 54, Idaho Code; or (7-1-93)

**h.** Appears in any classified directory, listing, or compendium under a heading, which when considered together with the advertisement, has the capacity or tendency to be deceptive or misleading with respect to the profession or professional status of the social worker; or (7-1-93)

**i.** Contains any other representation, statement, or claim which is misleading or deceptive. (7-1-93)

**05. Dual Relationships.** A social worker shall not engage in dual or multiple relationships with clients, with relatives of a client, or with individuals with whom clients maintain close personal relationships, in which a reasonable and prudent social worker would conclude after appropriate assessment that there is a risk of harm or exploitation to the client or of impairing a social worker's objectivity or professional judgment. A dual or multiple relationship is a relationship that occurs when a social worker interacts with a client in more than one capacity, whether it be before, during, or after the professional, social, or business relationship. Dual or multiple relationships can occur simultaneously or consecutively. After an appropriate assessment that the relationship does not create a risk of harm or exploitation to the client and will not impair a social worker's objectivity or professional judgment, the social worker must document in case records, prior to the interaction, when feasible, the rationale for such a relationship, the potential benefit to the client, and anticipated consequences for the client. ( )

**06. Business Relationships.** A social worker shall not purchase goods or services from a client or otherwise engage in a business relationship with a client except when: ( )

**a.** The client is providing necessary goods or services to the general public; ( )

**b.** A reasonable and prudent social worker would determine that it is not practical or reasonable to obtain the goods or services from another provider; and ( )

**c.** A reasonable and prudent social worker would determine that engaging in the business relationship will not be detrimental to the client or the professional relationship. ( )

**07. Bartering.** Bartering is the acceptance of goods, services, or other nonmonetary remuneration from a client in return for a social worker's services. Social workers shall not barter except when such arrangement is not exploitative and: ( )

**a.** Is initiated by the client and with the client's written informed consent; and ( )

**b.** Has an easily determined fair market value of the goods or services received. ( )

## IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

### 24.15.01 - RULES OF THE IDAHO LICENSING BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS

DOCKET NO. 24-1501-1201

#### 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 54-3404, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

The Idaho Board of Professional Counselors and Marriage and Family Therapists is updating the Incorporation by Reference section of the rule to allow the Board to adopt the new Code of Ethics for Marriage and Family Therapists. Changes are also needed to clarify supervised experience for marriage and family therapists; and to clarify continuing education. Finally, based upon a law change last year the Board has added a rule specifying the documentation necessary for informed consent.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 changes are simple in nature and they were discussed during noticed open meetings of the Board.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The Board is adopting the current edition of the American Association for Marriage and Family Therapy (AAMFT) Code of Ethics.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208)334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W State  
Boise, ID 83702  
(208) 334-3233 Ph. (208) 334-3945 fax

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-1501-1201**

**004. INCORPORATION BY REFERENCE (RULE 4).**

**01. ACA Code of Ethics.** “ACA Code of Ethics,” as published by the American Counseling Association (ACA), effective 2005 ~~and referenced in Subsections 200, 241.02, 350, and 450.01~~, is herein incorporated by reference and is available from the Board’s office and on the Board web site. (3-29-12)( )

**02. AAMFT Code of Ethics.** The document titled “AAMFT Code of Ethics,” as published by the American Association for Marriage and Family Therapy (AAMFT), effective July 1, 2001~~2~~ and referenced in Subsections 350, and 450.01, is herein incorporated by reference and is available from the Board’s office and on the Board web site. (3-30-06)( )

**03. Guidelines.** The document titled “Approved Supervision Designation Handbook” that provides supervision guidelines for supervisors, as published by the American Association for Marriage and Family Therapy (AAMFT), dated October 2007 referenced in Subsection 240~~39~~.03.a., is herein incorporated by reference and is available from the Board’s office and on the Board web site. (3-29-12)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**238. MARRIAGE AND FAMILY THERAPISTS (RULE 238).**

The following requirements must be met for marriage and family therapist licensure: (3-13-02)

**01. Graduate Degree.** Possess a graduate degree as outlined in Section 54-3405C(1), Idaho Code. (3-13-02)

**02. Practicum.** Must meet the requirements as outlined in Section 54-3405C(2), Idaho Code. (3-13-02)

**03. Supervised Marriage and Family Therapy Experience.** Must meet the three thousand (3,000) hour requirement as outlined in Section 54-3405C(3), Idaho Code. Effective July 1, 2004, a Idaho Marriage and Family Therapist must be registered with the Board to provide post graduate supervision for those pursuing marriage and family therapist licensure in Idaho. (3-29-12)

**a.** A minimum of two thousand (2,000) postgraduate direct client contact hours, in no less than a two (2) year time period shall include a minimum one thousand (1,000) direct client contact hours with couples and families; and (3-13-02)( )

~~**b.** A minimum one thousand (1,000) direct client contact hours with couples and families; and Two hundred (200) hours of supervision.~~ (3-13-02)( )

~~**ii.** Two hundred (200) hours of supervision.~~ (3-13-02)

~~**bc.** Effective July 1, 2014 a minimum of one hundred (100) hours post-graduate supervision must be obtained from a registered marriage and family therapist supervisor. The remaining one hundred (100) hours of supervision may also be obtained from a licensed clinical professional counselor registered as a supervisor with the Board, licensed psychologist, licensed clinical social worker registered as a supervisor with the Board of Social Work Examiners, or licensed psychiatrist who documents:~~ (3-29-12)

~~**i.** A minimum of five (5) years of experience providing marriage and family therapy; and~~ (3-20-04)

~~**ii.** Fifteen (15) contact hours of education in supervisor training; and~~ (3-20-04)

- iii. Has not been the subject of any disciplinary action for five (5) years immediately prior to providing supervision. (3-20-04)
- ~~ed.~~ No more than one hundred (100) hours of group supervision shall be allowed. Group supervision shall be defined as up to six (6) supervisees and one (1) supervisor; and (3-29-12)
- ~~de.~~ Individual supervision is defined as up to two (2) supervisees per supervisor; and (3-13-02)
- ~~ef.~~ Supervision must employ observation of client contact such as the use of audio technologies or video technologies or co-therapy, or live supervision; and (3-29-12)
- ~~fg.~~ In accordance with the adopted Codes of Ethics prohibiting dual relationships, a supervisor shall not act as an applicant's personal Professional Counselor/Therapist. (3-13-02)
- ~~gh.~~ The Board shall consider the recommendation of the supervisor(s) when determining the acceptability of the applicant's supervised experience. (4-2-03)
- ~~hi.~~ Supervision obtained in another state must conform with the state's requirements provided they are substantially equivalent to Idaho's requirements. (3-29-12)
- 04. Examination.** (3-13-02)
- a. The Board requires successful passage of the National Marital and Family Therapy Examination as approved by the Association of Marital and Family Therapy Regulatory Boards (AMFTRB). (3-13-02)
- b. The examination will be conducted at a time and place specified by the Board. (3-13-02)
- c. Successful passage of the examination is defined by the Board as achievement of the passing score set by the AMFTRB. Reexamination shall consist of the entire examination. (3-13-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**425. CONTINUING EDUCATION (RULE 425).**

Every person holding an Idaho license as a Professional Counselor, Clinical Professional Counselor, Associate Marriage and Family Therapist, or a Marriage and Family Therapist must complete in each twelve-month period preceding the renewal of a license, twenty (20) contact hours of continuing education. A contact hour is one (1) hour of actual participation in a continuing education activity, exclusive of breaks. (3-29-10)

**01. Contact Hours.** The contact hours of continuing education must be obtained in areas of study germane to the practice for which the license is issued as approved by the Board. No less than three (3) contact hours for each renewal period must be in ethics, which must be specific to legal issues, law, or ethics. Ethics contact hours must be obtained in a face-to-face setting where you can interact with the instructor and ~~students~~ participants. Therapeutic workshops, retreats and other self-help activities are not considered continuing education training unless specific parts of the experience are applicable to counseling or therapy practice. (~~3-29-12~~)(    )

**02. Documentation of Attendance.** It shall be necessary for the licensee to maintain documentation verifying attendance by securing authorized signatures or other documentation from the course instructors, providers, or sponsoring institution substantiating any hours attended by the licensee. This documentation must be provided to the Board upon request by the Board or its agent. (3-29-10)

**03. Approved Contact Hours, Limitations, and Required Documents.** (3-29-10)

a. College or University Courses for Credit or Audit. There is no limit to the contact hours that a

licensee may obtain in this category during each reporting period. However, all courses are subject to Board approval. For college or university courses, one (1) semester credit equals fifteen (15) contact hours; one (1) quarter credit equals ten (10) contact hours. The licensee must provide the Board with a copy of the licensee's transcript substantiating any hours attended by the licensee. (3-29-10)

**b.** Seminars, Workshops, Conferences. There is no limit to the contact hours that a licensee may obtain in this category during each reporting period. Teleconferences must feature an interactive format in order to qualify for contact hour credit. Interactive conferences are those that provide the opportunity for participants to communicate directly with the instructor. The licensee must provide the Board with a copy of the certificate, or letter signed by course instructors, providers, or sponsoring institution substantiating any hours attended by the licensee. (3-29-10)

**c.** Publications. A maximum of four (4) contact hours may be counted in this category during each reporting period. Publication activities are limited to articles in journals, a chapter in an edited book, or a published book or professional publication. The licensee must provide the Board with a copy of the cover page or the article or book in which the licensee has been published. For a chapter in an edited book the licensee must submit a copy of the table of contents. (3-29-10)

**d.** Presentations. A maximum of four (4) contact hours may be counted in this category during each reporting period. Class, conference, or workshop presentations may be used for contact hour credit if the topic is germane to the field. A specific presentation given repeatedly can only be counted once. A particular presentation will qualify for contact hour credit one (1) time in a five (5) year period. Only actual presentation time may be counted; preparation time does not qualify for contact hour credit. The licensee must provide the Board with a copy of the conference program or a letter from the sponsor, host organization, or professional colleague. (3-29-12)

**e.** Clinical Supervision and Case Consultation. A maximum of five (5) contact hours of received supervision/consultation may be counted in this category during each reporting period. In order to qualify for contact hour credit, supervision/consultation must be received on a regular basis with a set agenda. No credit will be given for the licensee's supervision of others. The licensee must provide the Board with a letter from the supervisor or consultant listing periods of supervision, ~~where the supervision occurred, and the name of the supervisor or~~ consultation. (3-29-10) ( )

**f.** Dissertation. A maximum of five (5) contact hours may be counted in this category during each reporting period. The licensee must provide the Board with a copy of the licensee's transcript and the title of the dissertation. (3-29-10)

**g.** Leadership. A maximum of four (4) contact hours may be counted in this category during each reporting period. The licensee must provide the Board with a letter from a professional colleague listing the position of leadership, periods of leadership, and the name of the organization under which the leadership took place. The following leadership positions qualify for continuing education credits: (3-29-10)

- i. Executive officer of a state or national counseling or therapy organization; (3-29-12)
- ii. Editor or editorial board service of a professional counseling or therapy journal; (3-29-12)
- iii. Member of a national ethics disciplinary review committee rendering licenses, certification, or professional membership; (3-29-10)
- iv. Active member of a counseling or therapy working committee producing a substantial written product; (3-29-10)
- v. Chair of a major counseling or therapy conference or convention; or (3-29-10)
- vi. Other leadership positions with justifiable professional learning experiences. (3-29-10)

**h.** Home Study and On-line Education. A maximum of ten (10) contact hours may be counted through self-study during each reporting period. In order for a home study or on-line course to qualify for contact hours, the

course must be provided by a Board-approved continuing education provider or a course pre-approved by the Board. (3-29-12)

**i.** Copy of Certification Required. A licensee applying for home study or on-line credit must provide the Board a copy of the certification that is verified by the authorized signatures from the course instructors, providers, or sponsoring institution and substantiates any hours completed by the licensee. A licensee seeking contact credit for reading a publication must submit results from a test on the information contained within the publication and administered by an independent third-party. (3-29-10)

**j.** Continuing Education Credit. Continuing education credit may be granted for a maximum of two (2) hours each renewal period for time spent attending one (1) Board meeting. Members of the Board are not entitled to continuing education credit for Board service. (3-29-10)

**04. Excess Hours.** Continuing education hours accumulated during the twelve (12) months immediately preceding the license renewal date may be applied toward meeting the continuing education requirement for the next license renewal. No more than ten (10) hours in excess of the required twenty (20) hours shall be carried forward. Excess hours may be used only during the next renewal period and may not be carried forward more than one (1) time. (3-29-12)

**05. Compliance Audit.** The Board may conduct random continuing education audits of those persons required to obtain continuing education in order to renew a license and require that proof acceptable to the Board of meeting the continuing education requirement be submitted to the Bureau. Failure to provide proof of meeting the continuing education upon request of the Board shall be grounds for disciplinary action in accordance with section 54-3407, Idaho Code. (4-2-03)

**06. Special Exemption.** The Board shall have authority to make exceptions for reasons of individual hardship, including health (certified by a medical doctor) or other good cause. The licensee must request such exemption prior to renewal and provide any information requested by the Board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the Board. There is no continuing education required of those holding a current inactive license. (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**501. -- ~~549~~24. (RESERVED)**

**525. DOCUMENTATION OF INFORMED CONSENT (RULE 525).**

In accordance with Section 54-3410A, Idaho Code, all licensees and registered interns will document the process of obtaining the informed consent of clients at the beginning of treatment and at other times as appropriate. Licensees and interns shall adhere to their respective Codes of Ethics and state law in obtaining informed consent and disclosing information to clients. The receipt of the disclosure shall be acknowledged in writing by both the client and the licensee or intern, and such disclosure of information concerning their practice must include: ( )

**01. Name, Business Address and Phone Number of Licensee or Intern.** If the licensee or intern is practicing under supervision, the statement shall include the licensee or intern status as such and the designated qualified supervisor's name, business address and phone number: ( )

**02. License Type and License Number, Credentials, and Certifications:** ( )

**03. Education and Training.** Formal education and training with the name(s) of the institution(s) attended and the specific degree(s) received: ( )

**04. Theoretical Orientation and Approach.** Counseling or marriage and family therapy: ( )

**05. Relationship.** Information about the nature of the clinical relationship; fee structure and billing



arrangements; cancellation policy: ( )

**06.     The Extent and Limits of Confidentiality.** ( )

**07.     Written Statement.** A statement that sexual intimacy is never appropriate with a client and should be reported to the board. ( )

**08.     Client's Rights.** The client's rights to be a participant in treatment decisions, to seek a second opinion, to file a complaint without retaliation, and to refuse treatment. ( )

**09.     Board Information.** The name, address, and phone number of the Board with the information that the practice of licensees and interns is regulated by the Board. ( )

**526. -- 549.     (RESERVED)**

## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.17.01 - RULES OF THE STATE BOARD OF ACUPUNCTURE**

**DOCKET NO. 24-1701-1201**

#### **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 54-4705, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

The State Board of Acupuncture is clarifying its rules on the process for active and inactive licenses. It also is making changes to the continuing education requirements to create two (2) separate categories to help ensure that the continuing education is appropriate. The changes to the records section clarify the release of the patient's records. New rules are also created to provide for disclosure of fees to the patient; clarify the nature of activities performed by unlicensed employees and non-exempt individuals, provide for supervision of trainees and technicians; and clarify limits on advertising.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes and additions are an effort to clarify the rules and create standards for public safety. The proposed rules were discussed at scheduled noticed board meetings and submitted to the Acupuncture Association which expressed no concerns.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W State  
Boise, ID 83702  
(208) 334-3233 Ph.  
(208) 334-3945 fax

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-1701-1201**

**301. RENEWAL OR REINSTATEMENT OF LICENSE (RULE 301).**

**01. Expiration Date.** All Acupuncture licenses and certificates expire and must be renewed annually on forms approved by the Board together with the required fee in accordance with Section 67-2614, Idaho Code. As part of a complete renewal application, the licensee will certify by signed affidavit completion of the required continuing education pursuant to Sections 305 through 307 of these rules. Licenses and certificates not so renewed will be cancelled in accordance with Section 67-2614, Idaho Code. (5-3-03)( )

**02. Reinstatement.** Any license or certificate cancelled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code, with the exception that the reinstatement fee shall be two hundred fifty dollars (\$250) and the applicant shall submit proof of having met the required continuing education for each year the license or certificate was cancelled. (5-3-03)

**302. ~~RENEWAL REQUIREMENT~~ INACTIVE STATUS (RULE 302).**

~~01. Active Status. Each renewal application must be accompanied by:~~ (3-10-00)

~~a. The established fee; and~~ (3-10-00)

~~b. Beginning July 1, 2004, certification of having attended and completed a minimum of fifteen (15) hours of acupuncture study or oriental medical theory and techniques within the previous twelve (12) months, as approved by the Idaho Board of Acupuncture.~~ (3-20-04)

~~e. Compliance with the continuing education (CE) requirements for licensees shall be reported annually. A CE course taken in any renewal year, but not claimed for CE credit in that year, may be utilized for credit in the following renewal year.~~ (5-3-03)

~~02. Inactive Status.~~ A currently licensed or certified practitioner may request in writing to have their license placed on inactive status and pay the inactive status fee. Such request must be made prior to the expiration date of the license, otherwise the license shall be deemed cancelled for failure to renew. (5-3-03)( )

~~031. Definition of Inactive Status.~~ "Inactive" status means an Idaho Acupuncture license that may be made active by paying the renewal fee. Until payment of said fee, such individual may not practice acupuncture in the state of Idaho. (5-3-03)

~~042. Waiving Continuing Education Requirements - Inactive Status.~~ All continuing education requirements will be waived for any year or portion thereof that a licensee maintains an inactive license and is not actively practicing in Idaho. Inactive license renewal notices and licenses will be marked "Inactive." A licensee desiring active status must show acceptable fulfillment of continuing educational requirements for the current year and submit a fee equivalent to the difference between the inactive and active renewal fee. The continuing educational requirement and the fees will not be prorated for a partial year. (5-3-03)( )

03. Return to Active Status. A licensee desiring active status must show acceptable fulfillment of continuing educational requirements for the current year and submit a fee equivalent to the difference between the inactive fee and renewal fee. The continuing educational requirement and the fees will not be prorated for a partial year. ( )

**303. -- 304. (RESERVED)**

**305. CONTINUING EDUCATION REQUIREMENTS (RULE 305).**

In order to further protect the public health and to facilitate the administration of the Acupuncture Act, the Board has ~~formulated the following rules~~ adopted the following requirements: (5-3-03)( )

~~01. **Subject Material.** The subject material of the continuing education requirement shall be germane to the practice of acupuncture and;~~ **Requirement.** All practitioners, for renewal of their license or certificate, shall be required to complete a minimum of fifteen (15) hours of continuing education within the preceding twelve (12) months. Beginning July 1, 2014, a minimum of ten (10) hours of continuing education must be from Category I topics, and a maximum of five (5) hours of continuing education may be from Category II topics, as set forth in Sections 306 and 307 of these rules. (5-3-03)( )

~~a. Accepted by NCCAOM, offered by accredited schools of acupuncture and oriental medicine, or otherwise approved by the Board. (5-3-03)~~

~~b. "Germane to the practice of acupuncture" shall be consistent with Section 54-4702(1)(4), Idaho Code. (5-3-03)~~

**02. Verification of Attendance.** It shall be necessary for each licensee to maintain verification of attendance by securing authorized signatures or other documentation from the course instructors or sponsoring institution substantiating any hours attended by the applicant. This verification shall be maintained by the licensee for no less than seven (7) years and provided to the Board upon the request of the Board or its agent. (5-3-03)

**03. Distance Learning and Independent Study.** The Board may approve a course of study for continuing education credit that does not include the actual physical attendance of the applicant in a face-to-face setting with the course instructor. Distance Learning or Independent Study courses shall be eligible for continuing education credits if approved by NCCAOM or upon approval of the Board. (4-6-05)

~~04. **Requests for Approval.** All requests for approval or pre-approval of educational programs must be made to the Board in writing, and must be accompanied by a statement that includes the name of the instructor or instructors, the date and time and location of the course, the specific agenda for the course, the number of continuing education credit hours requested, and a statement of how the course is believed to be pertinent to the practice of acupuncture. (5-3-03)~~

**054. Special Exemption.** The Board shall have authority to make exceptions for reasons of individual hardship, including health (certified by a medical doctor) or other good cause. The licensee must provide any information requested by the Board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the Board. (4-6-05)

**05. Carryover.** A continuing education course taken in a renewal year, but not claimed for continuing education credit in that year, may only be claimed for credit in the following renewal year. ( )

**306. APPROVAL OF CONTINUING EDUCATION COURSES.** Approved continuing education courses shall be those courses, programs, and activities that meet the general requirements, the content requirements of these rules, and that are approved or provided by the following entities or organizations, or otherwise approved by the Board: ( )

**01. NCCAOM;** ( )

**02. Accredited Schools.** Acupuncture and oriental medicine; and ( )

**03. Other Courses May Be Approved by the Board.** Other courses may be approved based upon documentation submitted by the licensee or course provider. All requests for approval or pre-approval of educational programs must be made to the Board in writing, and must be accompanied by a statement that includes the name of the instructor or instructors, the date and time and location of the course, the specific agenda for the course, the number of continuing education credit hours requested, and a statement of how the course is believed to be pertinent to the practice of acupuncture. ( )

**307. CONTENT OF CONTINUING EDUCATION COURSES.** The content of a continuing education course must be germane to the practice of acupuncture as defined in Section 54-4702, Idaho Code, and ( )

**01. Category I. Category I courses shall relate to the following topics: ( )**

**a. Acupuncture and the practice of acupuncture as defined in Section 54-4702, Idaho Code including topics that directly concern the history and theory of acupuncture, oriental medicine diagnosis and treatment techniques, and techniques of adjunctive oriental medicine therapies: ( )**

**b. The role of acupuncture in individual and public health, such as emergencies and disasters; or ( )**

**c. Research and evidence-based medicine as related to acupuncture and Asian medicine: ( )**

**02. Category II. Category II courses shall relate to the following topics: ( )**

**a. Western biomedicine and biological sciences: ( )**

**b. Scientific or clinical content with a direct bearing on the quality of patient care, community or public health, or preventive medicine: ( )**

**c. Laws and ethics: ( )**

**d. Enhancement of effective communication with other medical practitioners: ( )**

**e. Behavioral sciences, patient counseling, and patient management and motivation when such courses are specifically oriented to the improvement of patient health: ( )**

**f. Practice management unrelated to clinical matters and direct patient care, including, but not limited to, administrative record keeping, insurance billing and coding, and general business organization and management; or ( )**

**g. Patient education including, but not limited to, patient education in East Asian therapeutic exercise techniques and Asian nutritional therapies. ( )**

**3068. -- 399. (RESERVED)**

**401. RECORDS (RULE 401).**

A practitioner shall keep accurate records of each patient the practitioner treats. The records shall include the name of the patient, the indication and nature of treatment given, and any other relevant data deemed important by the practitioner. Records shall be kept on file for a minimum of five (5) years and shall be open to inspection at any time by the Board or its duly authorized representative, ~~and~~ A patient's records shall be made available to the patient ~~on~~ within thirty (30) days of a request. Reasonable fees may be charged for copying the records. (3-10-00)( )

**402. DISCLOSURE OF FEES (RULE 402).**

Prior to providing treatment to a new patient, a practitioner shall explain to the patient the fees expected for treatment, accepted methods of payment, and payment policies including when payment is expected and any fees or interest to be charged for late payments. Such explanations should be provided in writing. ( )

**01. Payment. If the practitioner expects payment from the patient before receiving third party payments, the practitioner shall inform the patient before providing treatment. ( )**

**02. Fee Changes. If the practitioner's fees change during the course of treatment, the practitioner shall inform the patient of the new fees before providing treatment under the new fee schedule. ( )**

**403. EMPLOYMENT OF UNLICENSED, NON-EXEMPT INDIVIDUALS (RULE 403).**

Individuals who do not have a license and are not exempt from licensure shall not perform any insertion of acupuncture needles or use similar devices and therapies, including application of moxibustion. They may only support the practitioner's professional practice by performing office and ministerial acts related to acupuncture. The practitioner shall be responsible for the services provided by such employees. ( )

**404. SUPERVISION OF TRAINEES AND TECHNICIANS (RULE 404).**

A licensed or certified acupuncturist providing supervision to trainees or technicians shall be responsible for the services provided by such individuals. Failure to adequately supervise such an individual may subject the supervisor to discipline. ( )

**405. ADVERTISING (RULE 405).**

A practitioner shall not disseminate or cause the dissemination of any advertisement or advertising including offers, statements, or other representations, which is in any way fraudulent, false, deceptive, or misleading. Any advertisement or advertising shall be deemed by the board to be fraudulent, false, deceptive, or misleading if it: ( )

**01. Contains a Misrepresentation of Fact.** Contains a misrepresentation of fact; ( )

**02. Misleading or Deceptive.** Is misleading or deceptive because in its content or in the context in which it is presented it makes only a partial disclosure of relevant facts. It is misleading and deceptive for a practitioner to advertise free or services for a specific charge when in fact the practitioner is transmitting a higher charge for the advertised services to a third party payor for payment or charges the patient or a third party. It is misleading and deceptive for a practitioner to use the word "Doctor" in offering to perform services without also indicating the profession in which the licensee holds a doctorate level degree. ( )

**03. Creates False or Unjustified Expectations of Beneficial Treatment or Successful Cures.** Creates false, or unjustified expectations of beneficial treatment or successful cures; ( )

**04. Failure to Perform.** Contains any representations or claims, as to which the practitioner, referred to in the advertising, fails to perform; or ( )

**05. Deceptive or Misleading Heading.** Appears in any classified directory, listing, or compendium under a heading, which when considered together with the advertisement, has the capacity or tendency to be deceptive or misleading with respect to the profession or professional status of the practitioner. ( )

**4026. -- 499. (RESERVED)**

## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.23.01 - RULES OF THE SPEECH AND HEARING SERVICES LICENSURE BOARD**

**DOCKET NO. 24-2301-1201**

#### **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 54-2910, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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 Speech & Hearing Services Licensure Board is changing its rules to establish an inactive license status and to add a reduced fee. This implements the law and provides a licensee the benefit of a lower fee if the licensee is not practicing. The rule changes to the qualifications for speech-language pathologists clarify the supervised experience requirement. The rule changes to the provisional permit section clarify the permit requirements and limitations for each licensure category.

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

The board is establishing a reduced renewal fee for an inactive license.

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

There is no impact on general funds. The impact on dedicated funds will depend on the number of licensees who choose to convert active licenses to inactive licenses.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed rules were discussed at scheduled noticed board meetings.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at 208 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W State  
Boise, ID 83702  
(208) 334-3233 Ph. (208) 334-3945 fax

**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 24-2301-1201**

**175. FEES (RULE 175).**

Applications should not be filed unless the applicant can meet all requirements. (3-30-06)

**01. Application Fee.** Application Fee - Thirty dollars (\$30). (3-30-06)

**02. Original License Fee.** The original license fee is one hundred dollars (\$100) to be accompanied by the completed application. (3-30-06)

**03. Examination/Reexamination Fee.** Examination fee shall be that charged by the examination provider plus an administration fee of fifty dollars (\$50) when the examination is administered by the Board. (3-30-06)

**04. Provisional Permit.** Provisional permit fee is one hundred dollars (\$100). (3-30-06)

**05. Annual Renewal Fee.** Annual renewal fee is one hundred twenty-five dollars (\$125). (3-29-10)

**06. Annual Renewal Fee for Inactive License.** Annual renewal fee is sixty-five dollars (\$65). ( )

**067. Refund of Fees.** No refund of fees shall be made to any person who has paid such fees for application or reinstatement of a license or examination fees for unexcused applicants. (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**201. -- 2094. (RESERVED)**

**205. INACTIVE STATUS (RULE 205).**

**01. Request for Inactive Status.** Each person requesting an inactive status during the renewal of their active license must submit a written request and pay the established fee. ( )

**02. Inactive License Status.** ( )

**a.** All continuing education requirements will be waived for any year or portion thereof that a licensee maintains an inactive license and is not actively practicing or supervising in Idaho. ( )

**b.** Inactive license renewal notices and licenses will be marked "Inactive." ( )

**c.** When the licensee desires active status, the licensee must show acceptable fulfillment of continuing education requirements for the previous twelve (12) months and submit a fee equivalent to the difference between the inactive and active renewal fee. ( )

**d.** Licensees shall not practice or supervise in Idaho as an Audiologist, Speech-Language Pathologist, Speech-Language Pathologist Aide, Speech-Language Pathologist Assistant, or Hearing Aid Dealer and Fitter while on inactive status. ( )

**206. -- 209. (RESERVED)**

**(BREAK IN CONTINUITY OF SECTIONS)**



**220. QUALIFICATIONS FOR SPEECH-LANGUAGE PATHOLOGIST LICENSURE (RULE 220).**

All applicants for licensure as a speech-language pathologist must comply with the following education, experience, and examination requirements in addition to completion of an application as set forth in Section 150: (4-2-08)

**01. Graduate Program Requirement.** A master's or doctoral degree from a nationally accredited school of speech-language pathology with a curriculum approved by the Board and includes a supervised academic clinical practicum. (4-2-08)(    )

**02. Examination.** Pass an examination in speech-language pathology given by PRAXIS or other examination as may be approved by the Board. (4-2-08)

**03. Supervised Experience.** Meet Satisfactorily complete the supervised ~~academic clinical practicum and supervised~~ postgraduate experience approved by the Board and defined in Subsections 220.03.a. through 221.03.d. (4-2-08)(    )

**a.** One thousand two hundred sixty (1260) hours of experience gained under the supervision of a licensed speech-language pathologist in no less than thirty-six (36) weeks of full-time (Thirty-five (35) hours per week) experience or the equivalent part-time experience and in no more than forty-eight (48) months. (    )

**b.** One thousand ten (1010) hours of experience must be in direct client contact. (    )

**c.** There must be at least six (6) hours of on-site observations of direct client contact each quarter. (    )

**d.** The nature of the supervision and contact must allow for immediate feedback and can be conducted using audio/visual, in person, electronic means, or telephone. (    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**450. PROVISIONAL PERMIT: FITTING AND DEALING HEARING AIDS (RULE 450).**

**01. Issuance of a Provisional Permit.** The Board may issue a provisional permit ~~in the following instances: to allow a person to engage in fitting and dealing hearing aids provided that the holder of a provisional permit may practice only while under the supervision of a person fully licensed as a hearing aid dealer and fitter or audiologist under this chapter.~~ (3-29-10)(    )

~~**a.** To allow a person to engage in the practice of audiology or speech language pathology while completing either the required postgraduate experience or a comparable experience as part of a doctoral program in audiology; or~~ (3-29-10)

~~**b.** To allow a person to engage in fitting and dealing hearing aids.~~ (3-29-10)

~~**c.** The holder of a provisional permit may practice only while under the supervision of a person fully licensed under this chapter.~~ (3-29-10)

**02. Adequate Personal Contact -- Requirements.** (3-30-06)

**a.** The supervisor and provisional permit holder must make personal contact ~~in-person~~ each work day to review any assignments, client contacts, ~~diagnoses, therapies,~~ and hearing aid fittings for the first sixty (60) days of employment. The nature of the supervision and contact must allow for immediate feedback and includes audio/visual, in person, or telephone contacts. (4-2-08)(    )

**b.** After the first sixty (60) days of employment, personal contact ~~in-person~~, described in Subsection

450.02.a., must be made no less than once in each calendar week throughout the remaining period of the permit.

~~(3-29-10)~~( )

c. In the event a permit holder fails the licensing examination two (2) consecutive times, and is eligible to maintain a permit, the supervisor and permit holder must reinstate contact in person each work day as set forth in Subsection 450.02.a. (3-29-10)

~~d. All client and supervisor contacts shall be recorded in the permit holder's quarterly report.~~

~~(3-30-06)~~

**03. Supervisor -- Responsibilities -- Restrictions.** (3-30-06)

~~a. The supervisor must be familiar with Section 54-2905 and 54-2907, Idaho Code.~~ (3-29-10)

~~ba.~~ The supervisor is responsible for all practice and ~~the ethical~~ conduct of each permit holder under supervision. ~~(3-30-06)~~( )

~~eb.~~ A supervisor may not supervise more than two (2) permit holders at a time. (3-29-10)

~~ec.~~ The supervisor must have an established business site within the state of Idaho which he regularly utilizes as a base of operation. The supervisor and the permit holder shall be required to work within the same facility. (3-29-10)

~~ed.~~ The supervisor must provide the permit holder with adequate training and client contact necessary to prepare for the required examination. (3-30-06)

~~fe.~~ The supervisor of a hearing aid dealer and fitter permit holder must record with the Board a plan of training that encompasses all ~~ten~~ sections covered in the license examination. The plan must be accepted and approved by the Board or its agent prior to issuance of the permit. The supervisor shall document, by the quarterly report, the permit holder's progress. ~~(3-29-10)~~( )

~~gf.~~ A supervisor may terminate his supervision of a permit holder by a written notice to the ~~Bureau Board~~ and the permit holder by certified mail at least ten (10) calendar days prior to the termination. ~~(3-30-06)~~( )

**04. Application -- Quarterly Reports.** (3-30-06)

a. Application for permit must include completed application, examination fee, permit fee, supervisor statement and plan of training and supervision. (3-30-06)

b. A permit is not valid unless an unrevoked statement accepting supervisory responsibility by a qualified licensee is on file with the Bureau. Upon termination of supervision, a new permit may be applied for in accordance with these rules, provided that the expiration date of the new permit is adjusted to not exceed the date of the third licensure examination following the original application. (3-30-06)

c. ~~Eighteen~~ Twenty-four (~~18~~24) months is the maximum time allowed for any combination of new or renewed permits. ~~(3-30-06)~~( )

d. Every permit holder must submit a quarterly report of his activities on forms furnished by the Bureau together with supplemental attachments as may be necessary, attested to and signed by the permit holder and the supervisor of record. All sales or fittings made by the person holding a permit ~~to practice audiology or a permit to engage in the dealing and fitting of hearing aids~~ will be indicated on the quarterly report forms supplied by the Bureau. Supplemental attachments to be submitted with this form include: ~~(3-29-10)~~( )

i. Log of client and supervisor contacts ~~as specified in Subsection 450.02.d. of these rules~~ shall be included in each quarterly report. ~~(3-29-10)~~( )

ii. Supervisor's statement of completion of training assignments by permit holder as specified in

Subsection 450.03.f. (3-29-10)

- iii. Copy of test results for all persons tested by the permit holder whether or not a sale occurred. (3-30-06)
- iv. Copy of hearing aid order for all fittings including specifications of instruments ordered. Hearing aid dealers and fitters ~~and audiologists~~ must provide a copy of hearing aid order. ~~(3-29-10)~~( )
- e. Quarterly reports are due on or before April 10th, July 10th, October 10th and January 10th for the three (3) months preceding the month due. If the permit has not been in effect for the entire quarter, the report is due for that portion of the quarter in which the permit was in effect. If quarterly reports are not received by the specified due date, the permit may be revoked. ~~A new permit may be applied for in accordance with Subsection 450.03.a.~~ ~~(3-29-10)~~( )

**05. Exemptions.** (3-30-06)

- a. A permit holder who ~~possesses the Certificate of Clinical Competence in Audiology from American Speech-Language-Hearing Association (ASHA) or who~~ is Board Certified by National Board for Certification in Hearing Instrument Sciences (NBC-HIS) shall be exempt from Subsections 450.02.a., 450.03.d., and 450.03.f. from the date of issuance of the permit until the date of the next offered licensing examination. ~~(3-29-10)~~( )
- b. Failure of the licensing examination or failure to take the next offered licensing examination rescinds this exemption. (3-30-06)

**451. -- ~~4059.~~ (RESERVED)**

**460. PROVISIONAL PERMIT: SPEECH-LANGUAGE PATHOLOGY (RULE 460).**

**01. Issuance of a Provisional Permit.** The Board may issue a provisional permit to allow a person to engage in the practice of speech-language pathology while completing the required postgraduate experience provided that the holder of a provisional permit may practice only while under the supervision of a person fully licensed as a speech-language pathologist under this chapter. ( )

**02. Supervisor -- Responsibilities -- Restrictions.** ( )

- a.** The supervisor is responsible for all practice and conduct of each permit holder under their supervision. ( )
- b.** A supervisor may not supervise more than two (2) permit holders at a time. ( )
- c.** The supervisor must provide the permit holder with adequate supervision and direct client contact activities which include, but are not limited to, assessment, diagnosis, evaluation, screening, treatment, and client management. ( )
- d.** A supervisor may terminate his supervision of a permit holder by a written notice to the Board and the permit holder by certified mail at least ten (10) calendar days prior to the termination. ( )
- e.** The supervisor must have an established business site within the state of Idaho which he regularly utilizes as a base of operation. All supervised activities shall occur in the state of Idaho. ( )

**03. Application and Quarterly Reports.** ( )

- a.** Application for permit must include completed application, application and permit fee, official transcripts from the college or university, PRAXIS scores if available, supervisor statement and plan of training and supervision. ( )
- b.** A permit is not valid unless an unrevoked statement accepting supervisory responsibility by a

qualified licensee is on file with the Bureau. Upon termination of supervision, a new permit may be applied for in accordance with these rules, provided that the combination of all permits shall not exceed forty-eight (48) months following the original application. ( )

c. Forty-eight (48) months is the maximum time allowed for any combination of new or renewed permits. ( )

d. Every permit holder must submit a quarterly report of their activities on forms furnished by the Bureau together with supplemental attachments as may be necessary, attested to and signed by the permit holder and the supervisor of record. Supplemental attachments to be submitted with this form include: ( )

i. Log of client and supervisor contacts shall be included in each quarterly report. ( )

ii. Supervisor's statement of completion of training assignments by permit holder. ( )

e. Quarterly reports are due on or before April 10th, July 10th, October 10th and January 10th for the three (3) months preceding the month due. If the permit has not been in effect for the entire quarter, the report is due for that portion of the quarter in which the permit was in effect. If quarterly reports are not received by the specified due date, the permit may be revoked. ( )

**461. -- 469. (RESERVED)**

**470. PROVISIONAL PERMIT: AUDIOLOGY (RULE 470).**

01. Issuance of a Provisional Permit. The Board may issue a provisional permit to allow a person to engage in the practice of audiology while completing either the required postgraduate experience or a comparable experience as part of a doctoral program in audiology provided that the holder of a provisional permit may practice only while under the supervision of a person licensed to practice audiology under this chapter. ( )

**02. Supervisor -- Responsibilities -- Restrictions.** ( )

a. The supervisor is responsible for all practice and conduct of each permit holder under his supervision. ( )

b. A supervisor may not supervise more than two (2) permit holders at a time. ( )

c. The supervisor must provide the permit holder with adequate supervision and direct client contact activities which include, but are not limited to, assessment, diagnosis, evaluation, screening, treatment, and client management. ( )

d. A supervisor may terminate the supervision of a permit holder by a written notice to the Board and the permit holder by certified mail at least ten (10) calendar days prior to the termination. ( )

e. The supervisor must have an established business site within the state of Idaho which he regularly utilizes as a base of operation. All supervised activities shall occur in the state of Idaho. ( )

**03. Application -- Quarterly Reports.** ( )

a. Application for permit must include completed application, permit fee, official transcripts from a college or university, documentation of having passed the approved examination, supervisor statement and plan of training and supervision. ( )

b. A permit is not valid unless an unrevoked statement accepting supervisory responsibility by a qualified licensee is on file with the Bureau. Upon termination of supervision, a new permit may be applied for in accordance with these rules, provided that the expiration date of the new permit is adjusted to not exceed the date from original application. ( )

c. Twenty-four (24) months is the maximum time allowed for any combination of new or renewed permits. ( )

d. Every permit holder must submit a quarterly report of their activities on forms furnished by the Bureau together with supplemental attachments as may be necessary, attested to and signed by the permit holder and the supervisor of record. All sales or fittings made by the person holding a permit to practice audiology will be indicated on the quarterly report forms supplied by the Bureau. Supplemental attachments to be submitted with this form include: ( )

i. Log of client and supervisor contacts shall be included in the quarterly report. ( )

ii. Supervisor's statement of completion of training assignments by permit holder as specified in these rules. ( )

e. Quarterly reports are due on or before April 10th, July 10th, October 10th and January 10th for the three (3) months preceding the month due. If the permit has not been in effect for the entire quarter, the report is due for that portion of the quarter in which the permit was in effect. If quarterly reports are not received by the specified due date, the permit may be revoked. A new permit may be applied for in accordance with these rules. ( )

**471. -- 499. (RESERVED)**

## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.25.01 - RULES OF THE IDAHO DRIVING BUSINESSES LICENSURE BOARD**

**DOCKET NO. 24-2501-1201**

#### **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 54-5403, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

The Idaho Driving Businesses Licensure Board is changing its rules to clarify the limitations on operating a business out of a secondary location and to limit the hours of student classroom instruction per day to six (6) hours.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is simple in nature and discussed during a noticed open meeting.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W State  
Boise, ID 83702  
(208) 334-3233 Ph.  
(208) 334-3945 fax

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-2501-1201**

**225. DRIVING BUSINESS LICENSE (RULE 225).**

A driving business license enables a licensee to operate a driver education business at one (1), principal classroom location as designated in the application. The licensee may also utilize secondary locations for classroom instruction, so long as the business does not conduct driver education at any given secondary location for more than sixty (60) consecutive calendar days in a one-year period. A driving business license is not transferable. The business licensee must conspicuously display the license at the business's principal classroom location. Each applicant must apply as required by Rule 150. ~~(4-7-11)~~( )

**01. Applicant Identity.** The applicant must provide such identifying information as may be requested by the Board including, without limitation, the following: (4-7-11)

**a.** The applicant's legal name (i.e., the name of the natural person or business entity to be issued the license) and assumed business name(s), if any. (4-7-11)

**b.** The applicant's social security number, if the applicant has no employees and is a natural person (including a sole proprietor acting under an assumed business name). If the applicant has employees or is not a natural person (e.g., is a general or limited partnership, corporation, limited liability partnership, or limited liability company), then the applicant must provide its employer identification number. (4-7-11)

**c.** The names and addresses of the applicant's officers and shareholders having a twenty-five percent (25%) or greater ownership interest (if a corporation), members and managers (if a limited liability company), and partners (if a partnership). (4-7-11)

**d.** The applicant's contact information, including its mailing address, physical address, and telephone number. (4-7-11)

**02. Criminal History Background Check.** The applicant, if a natural person, and all persons listed under Paragraph 225.01.c. and Subsection 225.05 of these rules, must submit to a current, fingerprint-based criminal history check conducted by an organization approved by the Board. Each applicant must ensure that such persons submit a full set of their fingerprints, and any relevant fees, directly to the organization that conducts the criminal history check, and that the organization delivers the results directly to the Bureau. The Board will not process the application until the Bureau has received all the criminal history checks. (4-7-11)

**03. Classroom Locations and Certificates of Occupancy.** Each applicant must list all principal and secondary classroom locations to be utilized by the business. The applicant must provide a certificate of occupancy issued to the building/room by the local fire marshal or the fire marshal's designated agent, for each classroom location other than a location in a public or private school building, government building, church, or synagogue. (4-7-11)

**04. Certificate of Vehicle Insurance.** The certificate of vehicle insurance for each vehicle utilized by the driving business for driver education must accompany the application. The minimum coverage will include: (4-7-11)

**a.** Medical Payment for each person - five thousand dollars (\$5,000); and either (4-7-11)

**b.** Limit of liability (Combined single limit) - five hundred thousand (\$500,000) to apply to bodily injury and/or property damage; or (4-7-11)

**c.** Limit of liability (Split limit). Bodily injury - two hundred-fifty thousand (\$250,000) per person/ five hundred thousand (\$500,000) each accident; Property damage - two hundred-fifty thousand (\$250,000) each accident. (4-7-11)

**05. List of Licensed Instructors.** Before beginning to offer driver education, and at all times while offering driver education, a driving business must employ or have contracted with one (1) or more licensed driving instructors to teach the classroom instruction phase and behind-the-wheel training phase of the driver education to be provided by the business. The driving business must submit to the Bureau a current list of such licensed instructors

with the application, and keep such list current after licensure. (4-7-11)

**06. Vehicles.** An applicant for a driving business license must submit to the Bureau a list of the vehicles that the business will utilize when offering driver education. A business licensee may not utilize vehicles that do not appear on the list. Each vehicle must have dual control brake pedals, safety restraints for all passengers, a side view mirror on each side of the vehicle, and an additional rear view mirror or compatible viewing device for the exclusive use of the instructor. A driving business must ensure that students are not allowed in a listed vehicle unless the vehicle is in a safe and proper operating condition. (4-7-11)

**a. Initial Inspection.** An applicant may not include a vehicle on a business's vehicle list unless the vehicle has passed a vehicle inspection performed by an ASE mechanic or vehicle technician within the two (2) month period preceding the application. The inspection must be documented on the Board-approved inspection form included at Appendix A to these rules, or on such other similar forms as may be approved by the Board. The person who inspected the vehicle must sign the form, certifying that the vehicle generally is in a safe and proper operating condition, and that each inspected item passed inspection or, if found to be in need of repair, was repaired on a given date. The application must be accompanied by a separate, signed form for each listed vehicle. (4-7-11)

**b. Annual Inspection.** A business licensee must ensure that each vehicle passes an inspection every twelve (12) months, and that the inspection is performed by an ASE mechanic or vehicle technician documented on the Board-approved form referenced in Paragraph 225.06.a. of these rules. If a vehicle fails an annual inspection, the business licensee must withdraw the vehicle from service. The business licensee may not use the vehicle for behind-the-wheel training until the vehicle passes a subsequent inspection and the business licensee has submitted to the Bureau the inspection form evidencing that the vehicle has passed. (4-7-11)

**c. Incident Inspection.** If a vehicle incident occurs that requires an investigation and report by law enforcement, or in which the damage exceeds one thousand five hundred dollars (\$1,500), the business licensee must withdraw the vehicle from service. The business licensee may not use the vehicle for behind-the-wheel training until the vehicle passes inspection by an ASE mechanic or vehicle technician and the business licensee has submitted to the Bureau the inspection form evidencing that the vehicle has passed. (4-7-11)

**d. Signage.** The business licensee must ensure that the outside of each vehicle is equipped with safely secured signs. Signs must include "Student Driver," "Driver Education," "Driver Training," "Driving School," or similar language that clearly designates the vehicle as a driver training vehicle. (4-7-11)

**07. Course of Instruction.** Each applicant, for an original business license, must provide with its application the course of instruction the applicant will use when instructing students. The applicant must demonstrate, to the Board's satisfaction, that the course of instruction is designed to produce safe and effective drivers and is educationally sound. The course of instruction must be based on the minimum curriculum components outlined in Rule 226, and shall consist of: (4-7-11)

**a.** Not less than thirty (30) hours of classroom instruction with no more than six (6) hours per day in any twenty-four (24) hour period; and ~~(4-7-11)~~( )

**b.** Not less than six (6) hours of behind-the-wheel practice driving; and (4-7-11)

**c.** Not less than six (6) hours of student, in-vehicle observation of other persons (e.g., parents, other student drivers, etc.) driving the vehicle. (4-7-11)

**08. On-line Instruction.** In addition to, or in lieu of offering classroom instruction at a physical classroom location, a business licensee may offer classroom instruction to students via the internet if the instruction content meets the requirements of these rules and is approved by the Board. (4-7-11)

**09. Instructor Apprenticeship Training Program.** A driving business may offer a Board-approved instructor apprenticeship training program under the conditions specified in Rule 275. (4-7-11)



**IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**  
**24.27.01 - RULES OF THE IDAHO STATE BOARD OF MASSAGE THERAPY**  
**DOCKET NO. 24-2701-1201 (FEE RULE - NEW CHAPTER)**  
**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-4007, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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 2012 legislature passed Senate Bill 1295 which created the State Board of Massage Therapy. These proposed rules are necessary in order to implement the provisions of Title 54, Chapter 40, Idaho Code.

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

The Board is establishing fees for application, original license, annual renewal, endorsement, duplicate license, and reinstatement.

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

The State Board of Massage Therapy's proposed rules establish fees that will be deposited in the Bureau of Occupational Licenses dedicated fund. The fees will be used by the Board of Massage Therapy to administer the provisions of the statute. Since all self-governing boards are expected to be self-supporting, these fees are based on the estimated costs and the anticipated number of licensees.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the 2012 legislature passed Senate Bill 1295 which created the State Board of Massage Therapy. The proposed rules are necessary in order to implement the provisions of Title 54, Chapter 40, Idaho Code. The proposed rules were discussed at scheduled noticed board meetings.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at 208 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
700 W State  
Boise, ID 83702  
(208) 334-3233 Ph. (208) 334-3945 fax

**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 24-2701-1201**

**IDAPA 24**  
**TITLE 27**  
**CHAPTER 01**

**24.27.01 - RULES OF THE IDAHO STATE BOARD OF MASSAGE THERAPY**

**000. LEGAL AUTHORITY.**

These rules are hereby prescribed and established pursuant to the authority vested in the Idaho State Board of Massage Therapy by the provisions of Section 54-4007, Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title.** The rules shall be cited as IDAPA 24.27.01, "Rules of the Idaho State Board of Massage Therapy." ( )

**02. Scope.** These rules implement the purposes and intent of Title 54, Chapter 40, Idaho Code, to regulate the profession of massage therapy in the interest of the public health, safety, and welfare. ( )

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, the Board may have written statements that pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. Such interpretations, if any, are available for public inspection and copying at cost in the main office of the Bureau of Occupational Licenses. ( )

**003. ADMINISTRATIVE APPEAL.**

Administrative appeals shall be governed by the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." ( )

**004. INCORPORATION BY REFERENCE.**

These rules do not incorporate by reference a document other than those sections of the Idaho Code so referenced. ( )

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

**01. Street Address.** The office of the Board is located within the Bureau of Occupational Licenses, 700 W. State Street, Boise, Idaho 83702. ( )

**02. Office Hours.** The office is open between the hours of 8:00 a.m. and 5:00 p.m., Mountain Time, each day except Saturdays, Sundays and holidays. ( )

**03. Mailing Address.** The mailing address of the Board is PO Box 83720, Boise, Idaho 83720-0063. ( )

**04. Telephone Number.** The telephone number of the Board is (208) 334-3233. ( )

**05. E-mail Address.** The Board's e-mail address is [mas@ibol.idaho.gov](mailto:mas@ibol.idaho.gov). ( )

**06. Facsimile.** The Board's fax number is (208) 334-3945. ( )

**07. Electronic Address.** The Board's official website can be found at <http://www.ibol.idaho.gov>. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

The rules contained herein are subject to and in compliance with the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. The records associated with the Board are subject to the provisions of the Public Records Act. ( )

**007. OPEN MEETINGS.**

This Board operates pursuant to the Idaho Open Meetings Law, Title 67, Chapter 23, Sections 40 through 47 inclusive, Idaho Code. ( )

**008. -- 009. (RESERVED)**

**010. DEFINITIONS.**

**01. Approved Massage Program.** A massage therapy program conducted by an entity which is registered with the Idaho State Board of Education pursuant to Chapter 24, Title 33, Idaho Code, or with a comparable authority in another state, and which meets the entry-level educational requirements as set forth in Section 600 of these rules. ( )

**02. Board.** Idaho State Board of Massage Therapy as created in Section 54-4006, Idaho Code. ( )

**03. Bureau.** Idaho Bureau of Occupational Licenses as created in Section 67-2602, Idaho Code. ( )

**04. Clinical Work.** Supervised, hands-on training in a classroom setting. ( )

**05. Code of Ethics.** The Idaho Code of Ethics for Massage Therapy attached to these rules as Appendix A. ( )

**06. CPR.** Cardiopulmonary resuscitation. ( )

**07. Standards of Practice.** The Standards of Practice of Massage Therapy attached to these rules as Appendix B. ( )

**011. UPDATE OF RECORDS.**

The licensure applicant or licensee is responsible for keeping his or her records updated with the Bureau. All changes including, but not limited to, changes in the manner in which the applicant or licensee is represented to the public, such as name changes and change of address, must be reported to the Bureau within thirty (30) days. The most recent mailing address on file with the Bureau will be used for purposes of all written communication with a licensee including, but not limited to, notification of renewal and notices related to complaints or disciplinary actions. ( )

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

**100. ORGANIZATION AND OPERATIONS OF THE BOARD.**

**01. Meetings.** The Board shall meet at least annually and at other such times and places as designated by the Chairman or upon the written request of any three (3) members of the Board. ( )

**a.** A minimum of three (3) Board members shall constitute a quorum and shall be required for the transaction of business. A majority vote of the quorum present at a meeting shall be considered the action of the Board as a whole. ( )

**b.** The Chairman shall be a voting member. ( )

**02. Organization.** At the first meeting of each fiscal year, the Board shall elect from its members a Chairman, who shall assume the duty of the office immediately upon such selection. ( )

a. The Chairman shall, when present, preside at all meetings, appoint with the consent of the Board all committees, and shall otherwise perform all duties pertaining to the office of Chairman. ( )

b. The Bureau shall act as an agent of the Board and shall be the official keeper of all records of the Board. The Bureau shall provide such services as may be authorized by Chapter 26, Title 67, Idaho Code, and as defined under contract between the Bureau and the Board. ( )

**101. -- 199. (RESERVED)**

**200. APPLICATION.**

**01. Filing an Application.** Applicants for licensure shall submit a complete application, verified under oath, to the Board at its official address. The application shall be on the forms approved by the Board and submitted together with the appropriate fee(s) and supporting documentation. ( )

**02. Supplemental Documents.** The applicant must provide or facilitate the provision of any supplemental third party documents that may be required under the qualifications for the license being sought. ( )

**03. Applications Must Be Complete.** Applications shall not be considered complete until all required information, documents, and fees are received by the Board. ( )

**04. Lack of Activity.** If an applicant fails to respond to a Board request or an application has lacked activity for twelve (12) consecutive months, the application on file with the Board will be deemed denied and will be terminated upon a thirty (30) day written notice, unless good cause is demonstrated to the Board. ( )

**250. FEES.**

Fees are established in accordance with Section 54-4008, Idaho Code, as follows: ( )

**01. Application Fee.** Application fee is fifty dollars (\$50). ( )

**02. Original License Fee.** Original license fee is seventy-five dollars (\$75). ( )

**03. Annual Renewal Fee.** Annual renewal fee is seventy-five dollars (\$75). ( )

**04. License by Endorsement Fee.** License by endorsement fee is seventy-five dollars (\$75). ( )

**05. Duplicate License Fee.** Duplicate license fee is ten dollars (\$10). ( )

**06. Reinstatement Fee.** Reinstatement fee is twenty-five dollars (\$25). ( )

**07. Examination Fee.** The fee for those examinations administered by a third party administrator shall be that fee determined by the administrator, and shall be paid directly to the administrator by the applicant. ( )

**08. Refund of Fees.** All fees are non-refundable except that, if a license is not issued, the license fee will be refunded. ( )

**300. REQUIREMENTS FOR ORIGINAL LICENSURE.**

The Board may grant a license to an applicant for licensure who completes an application as set forth in Section 200 of these rules and meets the following general, education, and examination requirements: ( )

**01. General.** ( )

a. An applicant must provide evidence of being at least eighteen (18) years of age. ( )

b. An applicant must certify that he/she has not been found guilty, convicted, received a withheld judgment, or suspended sentence for a felony or a crime involving moral turpitude, or if the applicant has been found

guilty, convicted, received a withheld judgment, or suspended sentence for such a crime, the applicant must submit a written statement of suitability for licensure as set forth in Section 306 of these rules. ( )

**c.** An applicant must certify that he/she has not been convicted of a crime under any municipal, state, or federal narcotic or controlled substance law, or if the applicant has been convicted of such a crime, the applicant must submit a written statement of suitability for licensure as set forth in Section 306 of these rules. ( )

**d.** An applicant must certify that he/she or his/her license has not been subject to any disciplinary action by a regulatory entity in another state, territory or country including, but not limited to, having an application for licensure denied. If the applicant or his/her license has been subject to discipline, the applicant must submit a written statement of suitability for licensure as set forth in Section 306 of these rules. ( )

**02. Education.** Each applicant shall: ( )

**a.** Certify that he/she has obtained a high school diploma or the equivalent; and ( )

**b.** Present evidence satisfactory to the Board of having successfully completed an approved massage program as defined in Section 010 of these rules. ( )

**03. Examination.** Present evidence satisfactory to the Board of having successfully passed an approved examination. ( )

**04. Waiver of Requirements.** Until July 1, 2014, the Board may waive the requirements of this section and issue a license to any applicant who meets one (1) of the following requirements: ( )

**a.** Completion of a minimum of five hundred (500) hours of supervised classroom and hands-on instruction relating to massage therapy; ( )

**b.** Completion of at least three hundred (300) hours of formal training in massage therapy as determined by the Board, and has practiced massage therapy for at least five (5) hours per week on average for at least three (3) years prior to the date of application; ( )

**c.** Completion of at least two hundred (200) hours of formal training in massage therapy, as determined by the Board, and has practiced massage therapy for at least five (5) hours per week on average for at least five (5) years prior to the date of application; ( )

**d.** Active membership in good standing as a massage therapist for a period of at least twelve (12) months of a national professional massage association or organization that offers professional liability insurance; or ( )

**e.** Successful passage of a nationally recognized competency examination in massage therapy that is approved by the Board. The passage of this exam may have occurred prior to the effective date of these rules. ( )

**301. -- 304. (RESERVED)**

**305. APPROVED EXAMINATIONS.**

Approved examinations shall be the following examinations or another nationally recognized competency examination in massage therapy that is approved by the Board. ( )

**01. Approved Examinations.** ( )

**a.** Massage and Bodywork Licensing Examination (MBLEx) as administered by the Federation of State Massage Therapy Boards (FSMTB); ( )

**b.** National Certification Examination for Therapeutic Massage and Bodywork (NCETMB) as administered by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB); ( )

**c.** National Certification Examination for Therapeutic Massage (NCETM) as administered by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB); and ( )

**d.** Other nationally recognized competency examinations in massage therapy that are approved by the Board. A written request for approval must be submitted to the Board together with supporting documentation as may be requested by the Board. ( )

**02. Successful Passage.** A passing score, or successful passage of the exam, will be determined by the entity administering the exam. ( )

**03. Date of Exam.** The passage of the exam may have occurred prior to the effective date of these rules. ( )

**306. WRITTEN STATEMENT OF SUITABILITY FOR LICENSURE.**

An applicant who or whose license has a conviction, finding of guilt, withheld judgment, or suspended sentence for a felony or crime involving moral turpitude, has a conviction for any crime under any municipal, state, or federal narcotic or controlled substance law, or has been subject to discipline in another state, territory or country must submit with his application a written statement and any supplemental information establishing his current suitability for licensure. ( )

**01. Consideration of Factors and Evidence.** The Board shall consider the following factors or evidence: ( )

**a.** The severity or nature of the crime or discipline; ( )

**b.** The period of time that has passed since the crime or discipline under review; ( )

**c.** The number or pattern of crimes or discipline or other similar incidents; ( )

**d.** The circumstances surrounding the crime or discipline that would help determine the risk of repetition; ( )

**e.** The relationship of the crime or discipline to the practice of massage therapy; ( )

**f.** The applicant's activities since the crime or discipline under review, such as employment, education, participation in treatment, payment of restitution, or any other factors which may be evidence of current rehabilitation; and ( )

**g.** Any other information regarding rehabilitation or mitigating circumstances. ( )

**02. Interview.** The Board may, at its discretion, grant an interview of the applicant. ( )

**03. Applicant Bears the Burden.** The applicant shall bear the burden of establishing his current suitability for licensure. ( )

**307. -- 309. (RESERVED)**

**310. REQUIREMENTS FOR LICENSURE BY ENDORSEMENT.**

The Board may grant a license to an applicant for licensure by endorsement who completes an application as set forth in Section 200 and meets the following requirements: ( )

**01. Holds a Current License.** The applicant must be the holder of a current active license or certificate in good standing in the profession, and at the level for which a license is being sought, issued by the authorized regulatory entity in another state. The state must have licensing or certification requirements substantially equivalent to or higher than those required for new applicants in Idaho. The certification of licensure or certification must be received by the Board from the issuing agency; ( )

**02. Has Not Been Disciplined.** The applicant or his/her license must have not been voluntarily surrendered, revoked, or suspended by any regulatory entity. The Board may consider an applicant who, or whose license, has been restricted, denied, sanctioned, or otherwise disciplined. If the applicant or his/her license has been subject to discipline, the applicant must submit a written statement of suitability for licensure as set forth in Section 306 of these rules; ( )

**03. Is of Good Moral Character.** The applicant must not have been found guilty, convicted, received a withheld judgment, or suspended sentence for any felony or any crime involving moral turpitude. If the applicant has been found guilty, convicted, received a withheld judgment, or suspended sentence for such a crime the applicant must submit a written statement of suitability for licensure as set forth in Section 306 of these rules; and ( )

**04. Has Not Been Convicted of a Drug Offense.** The applicant must not have been convicted of any crime under any municipal, state, or federal narcotic or controlled substance law. If the applicant has been convicted of such a crime, the applicant must submit a written statement of suitability for licensure as set forth in Section 306 of these rules. ( )

**311. -- 399. (RESERVED)**

**400. RENEWAL OR EXPIRATION OF LICENSE.**

A license expires on the license holder's birth date. The individual must annually renew the license before the license holder's birth date. Licenses not so renewed will be immediately cancelled in accordance with Section 67-2614, Idaho Code. ( )

**01. Renewal.** A license must be renewed before it expires by submitting a complete application for renewal on forms approved by the Board together with the renewal fee. As part of a complete renewal application, the licensee will attest to completion of the required continuing education pursuant to Section 500 of these rules. False attestation of satisfaction of the continuing education requirements on a renewal application shall subject the licensee to disciplinary action, including revocation. ( )

**02. Reinstatement.** A license that has been cancelled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code. ( )

**a.** Within five (5) years of cancellation, an applicant seeking reinstatement must submit to the Board evidence that the applicant has completed the required continuing education together with a complete renewal application and appropriate fee(s). ( )

**i.** The applicant must submit evidence of completion of continuing education hours totaling the hours required at the time of cancellation and for each year the license was cancelled. ( )

**ii.** The applicant must pay a reinstatement fee as set forth in Section 250 of these rules in addition to the renewal fee for each year the license was cancelled. ( )

**b.** After five (5) years of cancellation, the applicant will be treated as a new applicant, and application shall be made on the same forms and in the same manner as an application for an original license in accordance with Section 200 of these rules. ( )

**401. -- 499. (RESERVED)**

**500. CONTINUING EDUCATION.**

All licensees must comply with the following continuing education requirements: ( )

**01. Requirement.** Beginning with the second renewal of their license, a licensee shall be required to complete a minimum of six (6) hours of continuing education (which shall include 1.0 hour in ethics) within the preceding twelve (12) months that meet the requirements in Sections 501, 502 and 503 of these rules. ( )

**a.** An hour is defined as fifty (50) minutes out of each sixty (60) minute segment. ( )

**b.** Continuing education credit will only be given for actual time in attendance or for the time spent participating in the educational activity. ( )

**c.** The educational course setting may include a classroom, conference, seminar, on-line or a virtual classroom. ( )

**d.** If the licensee completes two (2) or more courses having substantially the same content during any one (1) renewal period, the licensee will only receive continuing education credit for one (1) of the courses. ( )

**02. Documentation.** Each licensee shall maintain documentation verifying continuing education course attendance and curriculum, or completion of the educational activity for a period of five (5) years from the date of completion. This documentation will be subject to audit by the Board. ( )

**a.** Documented evidence of meeting the continuing education course requirement shall be in the form of a certificate or letter from the sponsoring entity that includes verification of attendance by the licensee, the title of the activity, the subject material covered, the dates and number of hours credited, and the presenter's full name and professional credentials. Documented evidence of completing a continuing education activity shall be in such form as to document both completion and date of the activity. ( )

**b.** A licensee must submit the verification documentation to the Board, if requested by the Board. In the event a licensee fails to provide the Board with acceptable documentation of the hours attested to on the renewal application, the licensee may be subject to disciplinary action. ( )

**03. Waiver.** The Board may waive the requirements of this rule for reasons of individual hardship, including health or other good cause. The licensee should request the waiver in advance of renewal and must provide any information requested by the Board to assist in substantiating hardship cases. This waiver is granted at the sole discretion of the Board. ( )

**04. Carryover of Continuing Education Hours.** Continuing education hours not claimed in the current renewal year may be claimed in the next renewal year. A maximum of six (6) hours may be carried forward from the immediately preceding year, and may not be carried forward more than one renewal year. ( )

**05. Exemption.** A licensee is exempt from the continuing education requirements under this Section for the period between the initial issuance of the original license and the first expiration date of that license. ( )

**501. APPROVAL OF CONTINUING EDUCATION COURSES.**

Approved continuing education courses shall be those courses and programs that meet the requirements of these rules, and are approved, sponsored, or provided by the following entities or organizations, or otherwise approved by the Board: ( )

**01. A College or University.** Accredited by a nationally recognized accrediting agency as recognized by the United States Secretary of Education; ( )

**02. Federal, State or Local Governmental Entities;** and ( )

**03. National and State Massage Therapy Associations.** ( )

**04. Provider Course Approval.** Other courses may be approved by the Board based upon documentation submitted by a continuing education provider. Requests for approval of courses made by the provider must be submitted on a form approved by the Board that includes: ( )

**a.** The nature and subject of the course and its relevancy to the practice of massage therapy; ( )

**b.** The name of instructor(s) and their qualifications; ( )

**c.** The date, time and location of the course; ( )



- d. The specific agenda for the course; ( )
- e. The number of continuing education hours requested; ( )
- f. The procedures for verification of attendance; and ( )
- g. Other information as may be requested by the Board. ( )
- h. Upon review of all information requested, the Board may deny any request for a course that does not meet the requirements of Idaho law or rule. Board approval of a course shall be granted for a period not to exceed five (5) years, or until the course materials or instructors are changed, whichever may occur first. ( )

**05. Licensee Course Approval.** Other courses may be approved by the Board based upon documentation submitted by the licensee. All requests for approval must be made to the Board in writing and include the nature and subject of the course and its relevancy to the practice of massage therapy, name of instructor(s) and their qualifications, date, time and location of the course, and procedures for verification of attendance. ( )

**502. CONTINUING EDUCATION ACTIVITIES.**

The following educational activities shall qualify for continuing education as set forth: ( )

**01. Teaching a Course For The First Time, Not to Exceed Six Hours.** A report must be submitted, including the name of the course, course outline, qualifications for teaching, number of hours taught, number of participants taught, date and location of the training. ( )

**02. Publishing Articles or Books.** The hours awarded as determined at the discretion of the Board. ( )

**03. Self Study.** Using books, audio tapes, video tapes, DVD's, research materials, professional publications, online sources, and/or other electronic sources/methods documented by a type-written two-page report summarizing the study content. ( )

**503. CONTENT OF CONTINUING EDUCATION.**

The content of continuing education activities and course content must be germane to the practice of massage therapy as defined in Section 54-4002, Idaho Code, and courses in ethics must also be specific to legal issues, law, standards of practice, or ethics. ( )

**01. Continuing Education.** Content germane to the practice of massage therapy includes, but is not limited to: ( )

**a.** Applications of massage and bodywork therapy for specific needs, conditions, or client populations. ( )

**b.** Client assessment protocols, skills for client record keeping, strategies for interfacing with other health care providers. ( )

**c.** Use of external agents such as water, light, sound, heat, cold, or topical applications of plant or mineral-based substances. ( )

**d.** Body-centered or somatic psychology, psychophysiology, or interpersonal skills which may include communication skills, boundary functions, dual relationships, transference, counter-transference, and projection. ( )

**e.** Standards of practice, professional ethics, or state laws. ( )

**f.** Strategies for the marketing of massage and bodywork therapy practices. ( )

**g.** Theory or practice of ergonomics as applied to therapists or clients. ( )

- h.** Hygiene, methods of infectious disease control, organization and management of the treatment environment. ( )
- i.** Body sciences, which may include anatomy, physiology, kinesiology or pathology, as they apply to massage therapy. ( )
- j.** Certified CPR or first aid training. ( )

**504. -- 599. (RESERVED)**

**600. EDUCATIONAL PROGRAM STANDARDS.**

Approved educational programs shall be those programs conducted by an entity that meet the definition in Section 010 and that consist of a minimum of five hundred (500) hours of in-class supervised hours of coursework and clinical work that meets the following entry-level educational standards: ( )

**01. Coursework Content and Hours.** Coursework must include the following content areas and minimum hours: ( )

- a.** Two hundred (200) hours in massage and bodywork assessment, theory, and application; ( )
- b.** One hundred twenty-five (125) hours in body systems including anatomy, physiology, and kinesiology; ( )
- c.** Forty (40) hours in pathology; ( )
- d.** Twenty-five (25) hours in business and ethics; and ( )

**02. Clinical Work.** A minimum of one hundred ten (110) hours must be clinical work. ( )

- a.** Students shall not be permitted to render any clinical services to clients until students have completed at least twenty percent (20%) of the required hours of instruction. ( )
- b.** All clinical services shall be performed under the supervision of a person fully licensed. ( )

**700. SCOPE OF PRACTICE.**

All licensees shall practice in a competent manner consistent with their level of education, training, and experience. ( )

**701. -- 799. (RESERVED)**

**750. STANDARDS OF PRACTICE.**

All licensees shall comply with the Idaho Standards of Practice for Massage Therapy as approved by the Board and attached as Appendix B. ( )

**800. CODE OF ETHICS.**

All licensees shall comply with the Code of Ethics for Massage Therapy as approved by the Board and attached to these rules as Appendix A. ( )

**801. -- 899. (RESERVED)**

**900. DISCIPLINE.**

If the Board determines that grounds for discipline exist for violations of Title 54, Chapter 40, Idaho Code, violations of these rules, or both, it may impose disciplinary sanctions against the licensee including, without limitation, any or all of the following: ( )

- 01. Refuse License.** Refuse to issue, renew, or reinstate a license; ( )

- 02. Revoke License.** Revoke or suspend the licensee's license(s); ( )
- 03. Restrict License.** Condition, restrict, or limit the licensee's practice, license, or both; ( )
- 04. Administrative Fine.** Impose an administrative fine not to exceed one thousand dollars (\$1,000) for each violation of the Board's laws or rules; and ( )
- 05. Licensee Costs.** Order a licensee to pay the costs and fees incurred by the Board in the investigation, prosecution, or both, of the licensee for violation(s) of the Board's laws, rules, or both. ( )
- 901. -- 999. (RESERVED)**

### **IDAHO BOARD OF MASSAGE THERAPY CODE OF ETHICS -- APPENDIX A**

Preamble: This Code of Ethics is a summary statement of the standards of conduct that define ethical practice of massage therapy. All licensees are responsible for maintaining and promoting ethical practice.

A licensee shall:

- 1.** Conduct all business and professional activities honestly and within their scope of practice and all applicable legal and regulatory requirements.
- 2.** Inform clients of the limitations of the licensee's practice, the limitations of massage therapy, and the contraindications for massage therapy.
- 3.** Refer the client to other professionals or services if the treatment or service is beyond the licensee's scope of practice.
- 4.** Not engage in any sexual conduct, sexual activities, or sexualizing behavior involving a client, even if the client attempts to sexualize the relationship. Sexual activity includes any verbal and/or nonverbal behavior for the purpose of soliciting, receiving, or giving sexual gratification.
- 5.** Be truthful in advertising and marketing, and not misrepresent services, charges for services, credentials, training, experience or results.
- 6.** Safeguard the confidentiality of all client information, unless disclosure is requested by the client in writing or as allowed or required by law.
- 7.** Obtain informed and voluntary consent from clients.
- 8.** Allow a client the right to refuse, modify or terminate treatment regardless of prior consent given.
- 9.** Provide draping and treatment in a way that ensures the safety, comfort, and privacy of the client.
- 10.** Possess the right to refuse to treat any person or part of the body.
- 11.** Refuse any gifts or benefits that are intended to influence a referral, decision, treatment or the professional relationship between the licensee and the client.
- 12.** Report to the Idaho Board of Massage Therapy any unlicensed practice of massage therapy, and any evidence indicating unethical, incompetent or illegal acts committed by a licensee or individual.
- 13.** Do no harm to the physical, mental, and emotional well being of clients.

**IDAHO BOARD OF MASSAGE THERAPY STANDARDS OF PRACTICE -- APPENDIX B**

**Standard I: Professionalism**

In his/her professional role the licensee shall:

1. Cooperate with any Board investigation regarding any alleged violation of the Massage Therapy law or rules.
2. Use professional verbal, nonverbal, and written communications.
3. Provide an environment that is safe for the client and which meets all legal requirements for health and safety.
4. Use standard precautions to ensure professional hygienic practices and maintain a level of personal hygiene appropriate for practitioners in the therapeutic setting.
5. Wear clothing that is clean and professional.
6. Obtain voluntary and informed consent from the client, or written informed consent from client's legal guardian, prior to initiating the treatment plan.
7. If applicable, conduct an accurate needs assessment, develop a plan of care with the client, and update the plan as needed.
8. Use appropriate draping to protect the client's physical and emotional privacy. When clients remain dressed for seated massage or sports massage, draping is not required.
9. Not practice under the influence of alcohol, drugs, or any illegal substances, with the exception of legal or prescribed dosage of medication which does not impair the licensee.

**Standard II: Legal and Ethical Requirements**

In his/her professional role the licensee shall:

1. Maintain accurate and complete client billing and records. Client Records includes notes written by a licensee and kept in a separate client file that indicates the date of the session, areas of complaint as stated by client, and observations made and actions taken by the licensee.
2. Report within thirty (30) days to the Idaho Board of Massage Therapy any felony or misdemeanor criminal convictions of the licensee.

**Standard III: Confidentiality**

In his/her professional role the licensee shall:

1. Protect the confidentiality of the client's identity in conversations, all advertisements, and any and all other matters unless disclosure of identifiable information is requested or permitted by the client in writing or is required or allowed by law.
2. Protect the interests of clients who are minors or clients who are unable to give voluntary and informed consent by securing written informed consent from an appropriate third party or guardian.
3. Solicit only information that is relevant or reasonable to the professional relationship.

4. Maintain the client files for a minimum period of seven (7) years.
5. Store and dispose of client files in a secure manner.

**Standard IV: Business Practices**

In his/her professional role the licensee shall:

1. Not use sensational, sexual, or provocative language and/or pictures to advertise or promote their business.
2. Display/discuss a schedule of fees in advance of the session that is clearly understood by the client or potential client.
3. Make financial arrangements in advance that are clearly understood by, and safeguard the best interests of, the client or consumer.

**Standard V: Roles and Boundaries**

In his/her professional role the licensee shall:

1. Not participate in client relationships that could impair professional judgment or result in exploitation of the client.

**Standard VI: Prevention of Sexual Misconduct**

In his/her professional role the licensee shall:

1. Not engage in any behavior that sexualizes, or appears to sexualize, the client/licensee relationship.
2. Not participate in a sexual relationship or sexual conduct with the client, whether consensual or otherwise, from the beginning of the client/licensee relationship and for a minimum of six (6) months after the termination of the client/licensee relationship.
3. In the event that the client initiates sexual behavior, clarify the purpose of the therapeutic session and, if such conduct does not cease, terminate or refuse the session.

**IDAPA 25 - IDAHO OUTFITTERS AND GUIDES LICENSING BOARD**  
**25.01.01 - RULES OF THE IDAHO OUTFITTERS AND GUIDES LICENSING BOARD**  
**DOCKET NO. 25-0101-1201**  
**NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING**

**AUTHORITY:** In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Sections 67-5220(1), 36-2107(b) and (d); and 36-2110 and 36-2119 Idaho Code.

**MEETING SCHEDULE:** The Board intends to conduct public involvement opportunities throughout the state by mid-year 2013 where written and oral comments will be accepted. The date and location of those meetings have not been determined at the time of this notice. Additional notices indicating the time and location will be published.

The Board intends to hold a summary meeting in Boise where a final opportunity for written or oral comments will be provided. A notice indicating the time and location will be published.

Finally, the Board intends to ask for additional input from Sportsman organizations, Landowner Organization and Outfitter Organizations who have previously expressed interest in this matter.

**METHOD OF PARTICIPATION:** An updated copy of the draft rules under consideration and other related information will be maintained on the Board's website ([http://oglb.idaho.gov/rules\\_promulgations.html](http://oglb.idaho.gov/rules_promulgations.html)) as the Board moves through this negotiated rule making process.

Written comments may be submitted at the aforementioned meetings or to the Idaho Outfitters and Guides Licensing Board at [licensing@oglb.idaho.gov](mailto:licensing@oglb.idaho.gov) or the Idaho Outfitters and Guides Licensing Board, 1365 North Orchard, Room 172, Boise, Idaho 83706. For administrative purposes, the Board asks that written comments be limited to one 8 1/2" x 11" type written page or e-mail to no more than 750 words. All written comments must be directed to the undersigned and must be delivered on or before April 26, 2013.

E-MAIL	STREET ADDRESS
<a href="mailto:licensing@oglb.idaho.gov">licensing@oglb.idaho.gov</a>	The Idaho Outfitters and Guides Licensing Board 1365 North Orchard, Room 172 Boise, ID 83706

Instructions for oral presentations to be made at the aforementioned meetings will be provided in the notices.

**DESCRIPTIVE SUMMARY:** Idaho law states that an outfitter is “any individual, firm, partnership, corporation or other organization or any combination thereof, who, while engaging in any of the acts enumerated herein in any manner: (1) advertises or otherwise holds himself out to the public for hire; (2) provides facilities and services for consideration; and (3) maintains, leases, or otherwise uses equipment or accommodations for compensation for the conduct of outdoor recreational activities limited to the following: hunting animals or birds; float or power boating on Idaho rivers and streams; fishing on Idaho lakes, reservoirs, rivers and streams; and hazardous desert or mountain excursions.” Section 36-2102, Idaho Code. This includes private landowners.

In 1992, the Idaho Supreme Court (State v. Koller, 112 Idaho 409) held that the outfitting and guides act regulates commercial outfitting whether it's occurring on public or private lands, and that the State of Idaho has jurisdiction. As the result, private land owners have been licensed as outfitters themselves, have designated agents (including existing outfitters) as employees to provide facilities and services, and have leased lands to others for outfitting purposes.

However, beginning in 1989, the Board imposed a “moratorium” where outfitter licenses would not be issued for outfitted/guided waterfowl or turkey hunting, other than for a few licenses that were grandfathered in. This came as the result of the IDFG and sportsmen groups expressing concern over the potential loss of public access to private lands for hunting use, which they felt was significantly due to landowners leasing or in some way “entering into commercial agreements” for exclusive access to their private lands with individual persons, clubs or organizations or

licensed outfitters.

In 2009, the IOGLB determined that due to continued interest from land owners, and outfitters hoping to provide these services to the public, this moratorium put the IOGLB and the State of Idaho at risk of a successful legal challenge. The Board's attorney has expressed concern that the current law and Board rules do not provide present support for the moratorium should someone apply to outfit turkey or waterfowl.

The IOGLB contends that outfitting in itself provides to the public an opportunity to hunt these species. The Board also contends that facilities and services normally provided by a licensed outfitter that are of benefit to the public and desired by them, cannot be provided by any person, business or organization or land owner in the State of Idaho who has not been properly licensed. The Board has concluded that if there is truly a "public" access issue, then, it is important not to narrowly focus on limiting the licensed outfitters who can facilitate and provide access to private lands where the public can hunt and fish.

IDFG and IOGLB agreed that they have lacked a clear understanding of this phenomenon, and in 2011 and 2012 launched a study to determine the realities of this matter, and in particular with the respect to waterfowl and turkey hunting. The study showed that the effect of landowners leasing or in some way "entering into commercial agreements" for exclusive access to their private lands with individual persons, clubs or organizations or licensed outfitters was minor in the most highly sought areas in the State. It showed that instead, landowners who choose to restrict their lands did so for a variety of reasons, but most continued to be willing to provide access to those members of the public that asked them for it. It also showed that those who had not commercialized hunting or fishing on their private holdings were unlikely to do so under any circumstances.

The IOGLB and IDFG agree that in many instances, private landowners control the public access to Idaho's fish and wildlife, and that uncontrolled commercialization can lead to increased competition from the public for access which in certain instances can also lead to greater restrictions. Therefore, the intent of this rule is to provide a measured, but reasonable approach where landowners may continue to provide outfitted facilities and services to the public themselves, or where they may work with some other business entity who might lease their land and provide outfitted facilities and services to the public on their behalf.

An advisory group organized by the Directors of the Idaho Department of Fish and Game (IDFG) and the Idaho Outfitters and Guides Licensing Board (IOGLB) that was comprised of private land owners, sportsmen groups and outfitters organized and met in 2010 and 2011 and worked through all the issues, but failed to reach agreement on whether, and to what degree, additional outfitting for turkey and/or waterfowl hunting should be allowed. In the end, the groups represented stayed rigid in their positions. Their collective group positions prevented members from reaching a compromise solution. Nevertheless, the decision space for a compromise policy by the Board (and Commission) has been described quite clearly. The draft rule is generated from the near consensus solution within the framework of that group's efforts.

As the result, the Board decided to initiate a negotiated rule making process that would carry through the remainder of calendar year 2012 and into 2013 in order to have adequate time to obtain and consider public input and in order to make an appropriate decision on a final draft rule to be proposed to the 2014 legislature.

These rules will clarify existing rule 25.01.01.011.01 and outfitter licensing as it pertains to private membership organizations. This rule has been a source of concern due to ambiguity in existing language. More importantly, they, for the first time, establish rules in a new section 3, which clarifies when a private land owner is required to obtain an outfitter license. Private landowners charging a trespass fee, which historically has been acceptable to this Board, is now clarified as such and that acceptability is included in this rule. Furthermore, these rules clarify that with an outfitter's license, that same landowner can legally advertise and provide outfitted facilities and services or that they can lease land to an additional party who then may be licensed as an outfitter to do the same.

These rules for the first time establish statewide "policy" for considering applications, licensing and setting limitations for outfitted turkey and waterfowl hunting. These rules focus on establishing measured public access opportunities on private land in "high conflict areas" that may be best made possible by a land owner licensed as an outfitter or someone else leasing their land for that same purpose. In those "high conflict areas" guided services provided by the licensed outfitters would be significantly limited or prohibited altogether in certain instances. In other areas, with less potential for conflict and public access opportunities, the provision of outfitted service such as

guiding could be more extensive. Areas and limitations will be determined by the Board in cooperation with the Idaho Department of Fish and Game.

Furthermore, these rules clarify that licensing outfitted turkey and waterfowl hunting on public lands or waters would be considered by the Board only after analysis done by the appropriate agency managing the public resource in question.

Finally, these rules call for decisions for licensure for outfitted turkey and waterfowl hunting to be made by the Board after considering input from the Idaho Department of Fish and Game and allow for additional limits or restrictions beyond those mentioned above.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING COPIES:** For assistance on technical questions concerning this negotiated rulemaking or to obtain a copy of the preliminary draft of the text of the proposed rule (434.2), contact the Idaho Outfitter and Guides Licensing Board, 208-327-7380.

All written comments must be directed to the undersigned and must be delivered on or before April 26, 2013.

DATED this 24th day of August, 2012.

Jake Howard  
Executive Director  
Idaho Outfitters and Guides Licensing Board  
1365 North Orchard  
Boise, Idaho 83706  
Phone: 208-327-7380  
Fax 208-327-7382



**IDAPA 25 - IDAHO OUTFITTERS AND GUIDES LICENSING BOARD**  
**25.01.01 - RULES OF THE IDAHO OUTFITTERS AND GUIDES LICENSING BOARD**

**DOCKET NO. 25-0101-1202**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is September 5, 2012.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-2107 (b) and (d); 36-2110 and 36-2119, 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 and not later than October 17, 2012.

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:

Trapping wolves is relatively new to Idaho. There has been a need determined for licensing outfitters to help the State of Idaho and the Idaho Department of Fish and Game properly manage Idaho's wolf population. Therefore, the purpose of this rule is to allow outfitters and their guides to trap wolves during hunting trips and to allow hunting clients to accompany them.

Expanding existing rule IDAPA 25.01.01, Section 051, to allow outfitters licensed for big game hunting to provide wolf trapping as a hazardous excursion as defined under IDAPA 25.01.01, Subsection 002.20 and which would be conducted as a minor (incidental) activity as defined in 25.01.01, Subsections 002.23 and 002.28 during the course of big game hunting during any open wolf trapping season. The outfitter or designated agent must have wolf hunting and wolf trapping properly amended to their outfitter license prior to providing services to the public by submitting a major amendment along with certification of completion of the mandatory wolf trapping education class. Guides must be properly employed by and licensed as a guide to a specific outfitter responsible for big game hunts and incidental wolf trapping. In addition to other training requirements hunting guides must have completed the mandatory wolf trapping education class and have a certificate of completion on file with the outfitter prior to the activity taking place and available for inspection by the Board. Clients must possess the appropriate tags to participate in a hunt. Clients may hunt and kill any free ranging animal for which they have an appropriate license and tag, but cannot kill an animal in or within 200 yards of their outfitter's or the guide's trap line. A trapped animal must be killed quickly and humanely. Animals cannot be released and then "hunted" and then killed. Clients may accompany a properly licensed guide who is checking his outfitter's traps and must be directly accompanied by that guide at all times. Clients may not handle or be involved with handling traps or trapped animals. Clients may only observe the handling of trapped animals by properly licensed guides.

**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:

This temporary rule confers a benefit to licensed outfitters and their designated agents and guides who must have wolf hunting and wolf trapping properly amended to their licenses prior to providing that service to the public. This rule allows incidental trapping of wolves during guided big game hunts by properly licensed outfitters and guides.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 will occur as a result of changes that are being made.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because most wolf trapping where outfitters are involved is conducted on federal land administered by the United States Forest Service. This rule is the result of a “negotiated compromise” involving representatives of the Idaho Outfitters and Guides Licensing Board, the Idaho Department of Fish and Game and industry representatives with the USFS. It represents what is currently allowable by the USFS and is simply an extension of operating privileges provided to currently licensed outfitters and guides. The Board would modify this rule should the United States Forest Service modify their position.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact the Idaho Outfitters and Guides Licensing Board at 208-327-7380.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 24th day of August, 2012.

Jake Howard  
Executive Director  
Idaho Outfitters and Guides Licensing Board  
1365 North Orchard, Room 172  
Boise, Idaho 83706  
Phone: 208-327-7380  
Fax 208-327-7382

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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 25-0101-1202**

**051. PLACEMENT OF HUNTING CAMPS AND LEAVING OUTFITTER’S OPERATING AREA, BIG GAME HUNTING AND INCIDENTAL TRAPPING.**

**01. Hot Pursuit of Bear and Cougar With Hounds and Hot Pursuit Agreements.** With prior Board approval, an outfitter may enter into an adjacent area with a client for hot pursuit of bear and cougar hunting when hunting with hounds. The pursuit may not be started outside of the outfitter’s licensed area. Outfitters may negotiate agreements with adjoining outfitters for hot pursuit of bear and cougar when hunting with hounds. Such agreements constitute a minor amendment. A copy of the amended agreement must be filed with the Board annually. An outfitter wishing to conduct a hot pursuit hunt outside his licensed area with a client must: (3-20-04)

- a.** Obtain written permission from all outfitters whose licensed area(s) will be directly involved in the hunt; (3-20-04)
- b.** Obtain written permission from all applicable landowners or land managers; (3-20-04)
- c.** Obtain approval from the Outfitters and Guides Licensing Board to conduct the hunt by satisfying the following criteria: (3-20-04)
  - i.** Must be licensed for bear and cougar hunting; and (3-20-04)

- ii. Submit an incidental amendment fee. (3-20-04)
- d. With prior Board approval, on a case by case basis and under special circumstances, the Board may waive the requirement for approval from the adjacent outfitter. (3-20-04)
- 02. Camps.** A hunting outfitter shall not place a camp, nor cause one to be placed, in an area for which he is not licensed, except as identified in his approved operating plan. Whenever possible, camps used for big game hunting shall be placed well within the operating area and not near the boundary line. (3-20-04)
- 03. Guide Services to Clients Outside Outfitter's Operating Area.** Clients may not be provided guided services when outside the outfitters area, including any drop camp situation except as provided in Subsection 051.01. Outfitters providing unguided hunts may be subject to Board action for clients hunting outside their operating area. (3-20-04)
- 04. Wolf Trapping Incidental to Big Game Hunts. Only Outfitters licensed for big game hunting and for hunting wolves specifically may qualify to provide wolf trapping.** (9-5-12)T
- a.** Outfitters licensed for big game hunting and for hunting wolves may provide wolf trapping as a hazardous excursion as defined in Subsection 002.20 and which would be conducted as a minor (incidental) activity as defined in Subsections 002.23 and 002.28 during the course of big game hunting during any open wolf trapping season as follows: (9-5-12)T
- i. The Outfitter or Designated Agent must have wolf hunting and wolf trapping properly amended to their outfitter license by submitting a major amendment along with certification of completion of the mandatory wolf trapping education class. (9-5-12)T
- ii. The Outfitter or Designated Agent must complete the mandatory wolf trapping education class provided by the IDFG prior to allowing this activity to occur. (9-5-12)T
- iii. Wolf trapping may not be advertised, promoted, or booked as an outfitted or guided service. (9-5-12)T
- iv. Outfitter or Designated Agent may not kill or allow domestic livestock or animals to be killed for use as bait while in their operating area or to use live animals as bait and will be otherwise expected to follow existing state laws regarding handling of domestic livestock. (9-5-12)T
- v. A trapped animal must be killed quickly and humanely. It cannot be released and then "hunted" and then killed. (9-5-12)T
- vi. Outfitters may not directly engage a client in trapping activities. (see Subsections 051.c.i. through 051.c.v. for direction on activities clients may be engaged in). (9-5-12)T
- b. Guides:** (9-5-12)T
- i. Must be properly employed by and licensed as a guide to a specific outfitter responsible for big game hunts and incidental wolf trapping. (9-5-12)T
- ii. Must, in addition to other training requirements of hunting guides, have completed the mandatory wolf trapping education class and have a certificate of completion on file with the employing outfitter prior to the activity taking place and available for inspection by the Board. (9-5-12)T
- iii. Guides may check their employing outfitter's or their own wolf traps as per state requirements as part of outfitted, big game hunts. (9-5-12)T
- iv. May not provide services to the same client for two (2) different outfitters within a five (5) day period. (9-5-12)T

- v. May not advertise or act as an independent booking agent. (9-5-12)T
- vi. All traps and other equipment used for trapping must be provided by the licensed outfitter or may be leased from the guide with a copy of the lease put on file with the Board at the time the guide is licensed to the outfitter or two days prior to the excursion. (9-5-12)T
- c. Clients: (9-5-12)T
  - i. Must possess the appropriate tags to participate in a hunt. (9-5-12)T
  - ii. May hunt and kill any free ranging animal for which they have an appropriate license and tag, but cannot kill an animal in or within two hundred (200) yards of their Outfitter's or guide's trap line. A trapped animal cannot be released and then hunted or killed. (9-5-12)T
  - iii. May accompany a properly licensed guide who is checking his outfitter's traps and must be directly accompanied by that guide at all times. (9-5-12)T
  - iv. May not handle or be involved with handling traps or trapped animals. (9-5-12)T
  - v. May only observe the handling of trapped animals by properly licensed guides. (9-5-12)T

## IDAPA 27 - BOARD OF PHARMACY

### 27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

#### DOCKET NO. 27-0101-1201

#### 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 54-1717, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

These changes are needed for ease of reading and are mostly non-substantive. The rule changes included in this proposed docket are housekeeping in nature, as that they move a sub-rule, clarify renewal dates, rename registration categories, correct punctuation, change a rule number, strike extraneous verbiage, include references to recent changes to Idaho Code, harmonize terminology, and change a title.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 2, 2012 Idaho Administrative Bulletin, [Vol. 12-5, Page 82](#), and in the August 1, 2012 Idaho Administrative Bulletin, [Vol. 12-8, page 73](#), Docket No. 27-0101-1201.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mark Johnston, R.Ph., Executive Director, at (208) 334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 5th day of September, 2012.

Mark Johnston, R.Ph.  
Executive Director  
Board of Pharmacy  
1199 W. Shoreline Ln., Ste. 303  
P. O. Box 83720  
Boise, ID 83720-0067  
Telephone: (208) 334-2356  
FAX: (208) 334-3536

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 27-0101-1201**

**013. WAIVERS OR VARIANCES.**

**01. Criteria.** The Board may grant or deny, in whole or in part, a waiver of, or variance from, specified Board rules based on consideration of the following: (3-21-12)

**a.** The application of a certain rule or rules is unreasonable and would impose an undue hardship or burden on the petitioner; (3-21-12)

**b.** The waiver or variance requested would not allow conduct specifically prohibited by, or otherwise contrary to, state or federal law; (3-21-12)

**c.** The granting of the waiver or variance is consistent with the Board's mandate to promote, preserve, and protect public health, safety, and welfare; and (3-21-12)

~~**d.** The granting of the waiver or variance will afford substantially equal protection of public health, safety, and welfare intended by the particular rule for which the waiver or variance is requested. (3-21-12)~~

**02. Content and Filing of a Waiver or Variance Petition.** A petition for waiver or variance must be submitted in writing and must include at least the following:(3-21-12)

**a.** The name, address, and telephone number of the petitioner; (3-21-12)

**b.** A specific reference to the rule or rules from which a waiver or variance is requested; (3-21-12)

**c.** A statement detailing the waiver or variance requested, including the precise scope and duration; (3-21-12)

**d.** The name, address, and telephone number of any public agency or political subdivision that also regulates the activity in question or that might be affected by the granting of the waiver or variance; and(3-21-12)

**e.** The name, address, and telephone number of any known person who would be adversely affected by the granting of the waiver or variance. (3-21-12)

~~**f.** A description of how the waiver or variance, if granted, will afford substantially equal protection of public health, safety, and welfare intended by the particular rule for which the waiver or variance is requested. ( )~~

**03. Additional Information.** Prior to granting or denying the waiver or variance, the executive director may request additional information from the petitioner and may require the petitioner to appear before the Board at an upcoming Board meeting. (3-21-12)

**04. Granting or Denying the Petition for Waiver or Variance.** The decision to grant or deny the petition for waiver or variance will be at the discretion of the Board or, pursuant to Board authorization, its executive director based upon consideration of relevant factors. (3-21-12)

**05. Prohibited Requests.** A waiver or variance request that is contrary to federal law or Idaho Code or that seeks to delay or cancel an administrative deadline will not be considered or granted by the Board. (3-21-12)

**06. Conditions.** Waivers or variances may be granted subject to binding conditions, limitations, or restrictions determined necessary to protect the public health, safety, and welfare. (3-21-12)

**07. Time Period of Waiver or Variance.** Waivers or variances may be granted on a permanent or temporary basis. Temporary waivers or variances have no automatic renewal, but may be renewed if the Board finds

that sufficient grounds to allow the waiver or variance continue to exist. (3-21-12)

**08. Cancellation or Modification of a Waiver or Variance.** A waiver or variance granted by the Board may be cancelled or modified if the Board finds any of the following: (3-21-12)

**a.** The petitioner or other person who was the subject of the waiver or variance withheld or misrepresented material facts; (3-21-12)

**b.** The alternative means for ensuring adequate protection of public health, safety, or welfare are demonstrated to be insufficient after issuance of the waiver or variance; or (3-21-12)

**c.** The subject of the waiver or variance has failed to comply with the prescribed conditions, limitations, or restrictions of the waiver or variance. (3-21-12)

**09. Violations.** Violation of a condition, restriction, or limitation of a waiver or variance will be deemed a violation of the particular rule or rules for which the waiver or variance was granted. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**016. BOARD OF PHARMACY LICENSURE AND REGISTRATION.**

The Board is responsible for the control and regulation of the practice of pharmacy in or into the state of Idaho, which includes the licensure or registration of professional, supportive, and ancillary personnel who engage in or support the practice. The Board is also responsible for the control, regulation, and registration of persons or drug outlets that manufacture, distribute, or dispense controlled substances within or into the state. Licenses or registrations required by state or federal law, or both, must be obtained prior to engaging in these practices or their supportive functions. (3-21-12)

**01. Pharmacy Practice Act Licenses and Registrations.** The Board will issue or renew a license or a certificate of registration upon application and determination that the applicant has satisfied the requirements of the Idaho Pharmacy Act and any additional criteria specified by these rules for the license or registration classification. Licenses and certificates of registration issued pursuant to Title 54, Chapter 17, Idaho Code, expire annually on June 30 unless an alternate expiration term or date is specifically stated in these rules. (3-21-12)

**02. Idaho Controlled Substances Act Registrations.** The Board will issue or renew controlled substance registrations upon application and determination that the applicant has satisfied the requirements of the Idaho Controlled Substances Act and any additional criteria specified by state or federal law applicable to applicants that manufacture, distribute, or dispense, or conduct research with, controlled substances. Registrations issued pursuant to Title 37, Chapter 27, Idaho Code, ~~expire~~ **must be renewed** annually ~~on~~ **by** June 30 for pharmacists and ~~on~~ **by** December 31 for all other registrants. ~~(3-21-12)~~ **(\_\_\_\_\_)**

**a.** Unless a wholesaler, an applicant for an Idaho controlled substance registration must hold a valid, unrestricted Idaho license to prescribe, dispense, or administer controlled substances and, unless a pharmacist or certified euthanasia technician, a valid federal DEA registration. If a required license or registration is cancelled or otherwise invalidated by the issuing agency, the Idaho controlled substance registration will be correspondingly cancelled. (3-21-12)

**b.** A registrant engaging in more than one (1) group of independent activities, as defined by federal law, must obtain a separate Idaho controlled substance registration for each group of activities if not exempted from separate DEA registration by federal law. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**018. LICENSE AND REGISTRATION: REINSTATEMENT.**

The Board may, at its discretion, consider reinstatement of a license or registration upon receipt of a written petition and payment of the reinstatement and other fees due or delinquent at the time reinstatement is requested. (3-21-12)

**01. Satisfactory Evidence.** If applicable, reinstatement applicants must also provide satisfactory evidence of completion of continuing education requirements and compliance with any direct orders of the Board. (3-21-12)

**02. Additional Requirements.** A pharmacist reinstatement applicant must provide evidence of completion of a minimum of thirty (30) CPE~~s~~ hours within the twenty-four (24) months prior to reinstatement application and may be required to appear before the Board. The Board may also, at its discretion, impose additional requirements on a pharmacist reinstatement applicant who has not practiced as a pharmacist for the preceding twelve (12) months or longer that may include taking and passing an examination, completion of forty (40) intern hours for each year away from the practice of pharmacy, completion of additional CPE~~s~~ hours, or other requirements determined necessary to acquire or demonstrate professional competency. (~~3-21-12~~)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**021. FEE SCHEDULE.**

- 01. Licenses -- Professionals.** (3-21-12)
  - a.** Original pharmacist license: one hundred dollars (\$100). (3-21-12)
  - b.** Licensure by reciprocity: two hundred fifty dollars (\$250). (3-21-12)
  - c.** Pharmacist license annual renewal. (3-21-12)
    - i.** Active: ninety dollars (\$90). (3-21-12)
    - ii.** Inactive: fifty dollars (\$50). (3-21-12)
  - d.** Late payment processing: fifty dollars (\$50). (3-21-12)
  - e.** License reinstatement fee: seventy-five dollars (\$75). (3-21-12)
- 02. Certificates of Registration -- Professionals.** (3-21-12)
  - a.** Pharmacist engaged in telepharmacy across state lines -- registration or annual renewal: two hundred fifty dollars (\$250). (3-21-12)
  - b.** Pharmacist intern - registration or annual renewal: fifty dollars (\$50). (3-21-12)
  - c.** Pharmacist extern registration and annual renewal: fifty dollars (\$50) due upon enrollment in an accredited school or college of pharmacy and renewed annually at no charge. (3-21-12)
  - d.** Technician - registration or annual renewal: thirty-five dollars (\$35). (3-21-12)
  - e.** Veterinary drug technician - registration or annual renewal: thirty-five dollars (\$35). (3-21-12)
  - f.** Registration reinstatement: one-half (1/2) the amount of the annual fee. (3-21-12)
- 03. Certificates of Registration and Licensure - Facilities.** (3-21-12)
  - a.** Retail pharmacy - registration or annual renewal: one hundred dollars (\$100). (3-21-12)



- b.** Institutional facility - registration or annual renewal. (3-21-12)
- i. Hospital pharmacy: one hundred dollars (\$100). (3-21-12)
- ii. Nursing home: thirty-five dollars (\$35). (3-21-12)
- iii. ~~Hospital without a pharmacy~~ **Clinic**: thirty-five dollars (\$35). ~~(3-21-12)~~( )
- c.** Manufacturer (including a repackager that is a manufacturer's authorized distributor of record) - registration or annual renewal: one hundred dollars (\$100). (3-21-12)
- d.** Wholesaler. (3-21-12)
- i. License or annual renewal: one hundred thirty dollars (\$130); or (3-21-12)
- ii. Registration or annual renewal: one hundred dollars (\$100). (3-21-12)
- e.** Veterinary drug outlet - registration or annual renewal: one hundred dollars (\$100). (3-21-12)
- f.** Telepharmacy across state lines - registration or annual renewal: one hundred dollars (\$100). (3-21-12)
- g.** Mail service pharmacy. (3-21-12)
- i. Initial license: five hundred dollars (\$500). (3-21-12)
- ii. License annual renewal: two hundred fifty dollars (\$250). (3-21-12)
- h.** Limited service outlet - registration or annual renewal. (3-21-12)
- i. Limited service outlet, if not listed: one hundred dollars (\$100). (3-21-12)
- ii. ~~Parenteral admixture~~ **Sterile product** pharmacy: one hundred dollars (\$100). ~~(3-21-12)~~( )
- iii. Remote dispensing pharmacy: one hundred dollars (\$100). (3-21-12)
- iv. Facility operating a narcotic treatment program: one hundred dollars (\$100). (3-21-12)
- v. Durable medical equipment outlet: fifty dollars (\$50). (3-21-12)
- vi. Prescriber drug outlet: thirty five dollars (\$35). (3-21-12)
- i.** Analytical or research lab -- registration or annual renewal: forty dollars (\$40). (3-21-12)
- j.** Retail non-pharmacy outlets - registration or annual renewal. (3-21-12)
- i. "A" (Stocks more than fifty (50) drug items): sixty dollars (\$60). (3-21-12)
- ii. "B" (Stocks fifty (50) or fewer drug items): twenty-five dollars (\$25). (3-21-12)
- iii. "V" (Vending machines): ten dollars (\$10) per machine. (3-21-12)
- k.** Supplemental facility registrations or annual renewals. (3-21-12)
- i. Laminar flow or other hood, biological safety cabinet, or barrier isolator -- single registration required for one (1) or more hoods: no charge. (3-21-12)

- ii. ADS system -- single registration required for one (1) or more systems: no charge. (3-21-12)
- l. Reinstatement: one-half (1/2) the amount of the annual fee. (3-21-12)
- 04. Controlled Substance Registration.** (3-21-12)
  - a. Controlled substance - registration or annual renewal: sixty dollars (\$60). (3-21-12)
  - b. Wholesaler or distributor-controlled substance - registration or annual renewal: one hundred dollars (\$100). (3-21-12)
  - c. Controlled substance registration reinstatement: seventy-five dollars (\$75). (3-21-12)
- 05. Administrative Services and Publications.** (3-21-12)
  - a. Experiential hours certification: twenty-five dollars (\$25). (3-21-12)
  - b. Duplicate pharmacist certificate of licensure: thirty-five dollars (\$35). (3-21-12)
  - c. Duplicate registration or license card: ten dollars (\$10). (3-21-12)
  - d. Commercial lists. (3-21-12)
    - i. Pharmacy list: fifty dollars (\$50). (3-21-12)
    - ii. Pharmacist list: fifty dollars (\$50). (3-21-12)
    - iii. Controlled Substances Act ("CSA") registrant list: one hundred fifty dollars (\$150). (3-21-12)
  - e. Official Idaho Register: fifteen dollars (\$15). (3-21-12)
  - f. Idaho Pharmacy Laws and Rules book: thirty-five dollars (\$35). (3-21-12)
  - g. Hearing transcript: five dollars (\$5) per page. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**034. PHARMACIST INACTIVE STATUS LICENSE.**

- 01. Required Criteria.** Upon Board approval, an inactive status pharmacist license may be issued if an applicant: (3-21-12)
- a. Is a pharmacist in the state of Idaho licensed in good standing; (3-21-12)
  - b. Is unable or unwilling to practice pharmacy due to physical limitations or changes in circumstance; and (3-21-12)
  - c. Has submitted the required application. (3-21-12)
- 02. Exemptions and Restrictions.** Inactive status licensees are exempt from CPE requirements and are prohibited from engaging in the practice of pharmacy while on inactive status. (3-21-12)
- 03. Return to Active Status.** If an inactive status licensee wishes to return to active status, the licensee must *complete a minimum of thirty (30) CPEUs and* comply with the reinstatement requirements of these rules. (3-21-12)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**052. CPE: REQUIREMENTS.**

Each pharmacist applicant for license renewal must annually complete ~~the equivalent of one and one-half (1.5)~~ **fifteen (15) CPE units (CPEU) hours.** ~~One (1) CPEU is the equivalent of ten (10) clock hours of participation in programs approved by the Board.~~ (3-21-12)(    )

**01. ACPE or CME.** At a minimum, eight (8) ~~clock of the CPE~~ hours ~~(0.8 CPEU)~~ **obtained** must be all or a combination of ACPE or CME accredited programs. ACPE accredited activities must have a participant designation of "P" (for pharmacist) as the suffix of the ACPE universal program number. (3-21-12)(    )

**02. Pharmacy Law.** One (1) ~~clock of the CPE~~ hours ~~(0.1 CPEU)~~ **obtained** must be ACPE accredited or Board approved jurisprudence (pharmacy law) programs. (3-21-12)(    )

**03. Board Approved.** A maximum of six (6) ~~clock of the CPE~~ hours ~~(0.6 CPEU)~~ **obtained** may be Board-approved programs not accredited through ACPE or CME. (3-21-12)(    )

**04. Live Attendance.** Three (3) ~~clock of the CPE~~ hours ~~(0.3 CPEU)~~ **obtained** must be ~~obtained~~ by attendance at live or synchronous online CPE programs. (3-21-12)(    )

**05. Carryover of Certain Unused Units.** ~~Clock CPE~~ hours ~~of CPEU~~ accrued during June of a licensing period may be carried over into the next licensing period to the extent that a pharmacist's total ~~clock CPE~~ hours ~~of CPEU~~ for the current licensing period exceed the total CPEUs ~~hours~~ required by these rules. (3-21-12)(    )

**06. New Pharmacist Exemption.** Recent pharmacist graduates applying for the first license renewal are not required to complete or certify the annual CPE requirements. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**110. PRESCRIPTION DRUG ORDER: VALIDITY.**

Prior to filling or dispensing a prescription drug order, a pharmacist must verify its authenticity and validity. (3-21-12)

**01. Invalid Prescription Drug Orders.** A prescription drug order is invalid if not issued: (3-21-12)

a. In good faith; (3-21-12)

b. For a legitimate medical purpose; (3-21-12)

c. By a licensed prescriber; (3-21-12)

d. Within the course and scope of the prescriber's professional practice and prescriptive authority; (3-21-12)

e. Pursuant to a prescriber-patient relationship, unless statutorily exempted; and (3-21-12)(    )

f. In the form and including the elements required by law. (3-21-12)

**02. Antedating or Postdating.** A prescription drug order is invalid if antedated or postdated. (3-21-12)

**03. Tampering.** A prescription drug order is invalid if it shows evidence of alteration, erasure, or addition by any person other than the person who wrote it. (3-21-12)

**04. Prescriber Self-Use.** A prescription drug order written for a controlled substance is invalid if written for the prescriber's own use. (3-21-12)

**05. Family Members.** A prescription drug order written for a prescriber's family member is invalid if inconsistent with the scope of practice and prescriptive authority of the prescriber's profession. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**115. PRESCRIPTION DRUG ORDER: TRANSFERS.**

**01. Communicating Prescription Drug Order Transfers.** Except prescription drug orders for Schedule II controlled substances, a pharmacist may transfer prescription drug order information for the purpose of filling or refilling if the information is communicated from pharmacist to pharmacist verbally, electronically, or via fax. (3-21-12)

**a.** Prescription drug order information may also be communicated verbally by a student pharmacist, under the supervision of a pharmacist, to another pharmacist as long as one (1) of the parties involved in the communication is a pharmacist. (3-21-12)

**b.** If transferring by fax transmission, the transfer document used must be signed by the transferring pharmacist. (3-21-12)

**02. Documentation Required of the Transferring Pharmacy.** The pharmacist transferring prescription drug order information must void or otherwise indicate that the original prescription drug order has been transferred and record the following information: (3-21-12)

**a.** The name of the transferring pharmacist; (3-21-12)

**b.** The name of the receiving pharmacist; (3-21-12)

**c.** The name of the receiving pharmacy; (3-21-12)

**d.** The date of the transfer; (3-21-12)

**e.** The number of authorized refills available; and (3-21-12)

**f.** If written for a controlled substance, the address and DEA registration number of the receiving pharmacy. (3-21-12)

**03. Documentation Required of the Receiving Pharmacy.** The pharmacist receiving a transferred prescription drug order must document that the prescription drug order is a "transfer" and record the following information: (3-21-12)

**a.** The name of the receiving pharmacist; (3-21-12)

**b.** The name of the transferring pharmacist; (3-21-12)

**c.** The name of the transferring pharmacy; (3-21-12)

**d.** The date of issuance of the original prescription drug order; (3-21-12)

**e.** The number of refills authorized by the original prescription drug order; (3-21-12)

**f.** The number of authorized refills available; and (3-21-12)

- g.** If written for a controlled substance: (3-21-12)
- i.** The dates and locations of the original dispensing and previous refills; and (3-21-12)
- ii.** The name, address, DEA registration number, and the serial number assigned to the prescription ~~number of~~ by the transferring pharmacy for each dispensing and of the pharmacy that originally filled the prescription, if different. ~~(3-21-12)~~( )

**04. Electronic Prescription Drug Order Transfers.** For electronic prescription drug orders that are transferred electronically, the transferring pharmacist must provide all of the information required to be recorded by the receiving pharmacist in addition to the original electronic prescription data. The receiving pharmacist must create an electronic record for the prescription drug order that includes the receiving pharmacist's name and all of the information transferred with the prescription. (3-21-12)

**05. Pharmacies Using Common Electronic Files.** Pharmacies may establish and use a common electronic file to maintain required dispensing information. (3-21-12)

**a.** Pharmacies using a common electronic file are not required to transfer prescription drug order information for dispensing purposes between or among other pharmacies sharing the common electronic file. (3-21-12)

**b.** Common electronic files must contain complete and accurate records of each prescription and refill dispensed. (3-21-12)

**06. Transferring Prescription Drug Orders for Controlled Substances.** A prescription drug order for a controlled substance listed in Schedules III, IV, or V may be transferred only from the pharmacy where it was originally filled and never from the pharmacy that received the transfer, except that pharmacies electronically sharing a real-time, online database may transfer up to the maximum refills permitted by law and the prescriber's authorization. (3-21-12)

**07. Transferring Prescription Drug Order Refills.** Prescription drug orders for non-controlled substances may be transferred more than one (1) time if there are refills remaining and other legal requirements are satisfied. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**204. CONTROLLED SUBSTANCES: PMP.**

Specified data on controlled substances must be reported weekly, or more often as required by the Board, by all pharmacies holding a DEA retail pharmacy registration that dispense controlled substances in or into Idaho and prescribers that dispense controlled substances to humans. Data on controlled substance prescription drug samples does not need to be reported. ~~(3-21-12)~~( )

**01. Online Access to PMP.** Online access to the Board's PMP is limited to licensed prescribers and pharmacists for treatment purposes. To obtain online access, a prescriber or pharmacist must: (3-21-12)

**a.** Complete and submit a registration application and a written agreement to adhere to the access restrictions and limitations established by law; (3-21-12)

**b.** Obtain Board approval for access; and (3-21-12)

**c.** Be issued a user account, login name, and password. (3-21-12)

**02. Use Outside Scope of Practice Prohibited.** Information obtained from the PMP must not be used for purposes outside the prescriber's or pharmacist's scope of professional practice. (3-21-12)

**03. Profile Requests.** Authorized persons without online access may obtain a profile by completing the required form and submitting it to the Board office with proof of identification and other credentials required to confirm the requestor's authorized status pursuant to Section 37-2726, Idaho Code. (3-21-12)

**04. Suspension, Revocation, or Restriction of PMP Access.** Violation of this rule provides grounds for suspension, revocation, or restriction of the prescriber's or pharmacist's authorization for online access to the PMP. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**330. PHARMACIST: ADMINISTERED IMMUNIZATIONS.**

**01. Patient Eligibility.** A pharmacist may administer an immunization to a healthy patient without immunization contraindications pursuant to the latest recommendations by the CDC or other qualified government authority or to any patient pursuant to a prescription drug order issued by another prescriber. (3-21-12)

**02. Pharmacist Qualifications.** To qualify to administer immunizations, a pharmacist must first: (3-21-12)

**a.** Successfully complete an ACPE-accredited or comparable course that meets the standards for pediatric, adolescent, and adult immunization practices recommended and approved by the CDC's Advisory Committee on Immunization Practices and includes at least the following: (3-21-12)

- i. Basic immunology, vaccine, and immunization protection; (3-21-12)
- ii. Diseases that may be prevented by vaccination or immunization; (3-21-12)
- iii. Current recommended immunization schedules; (3-21-12)
- iv. Vaccine and immunization storage and management; (3-21-12)
- v. Informed consent; (3-21-12)
- vi. Physiology and techniques for administration of immunizations; (3-21-12)
- vii. Pre-immunization and post-immunization assessment and counseling; (3-21-12)
- viii. Immunization reporting and records management; and (3-21-12)
- ix. Identification response, documentation, and reporting of adverse events. (3-21-12)

**b.** Hold a current certification in basic life support for healthcare providers offered by the American Heart Association or a comparable Board-recognized certification program that includes cardiopulmonary resuscitation (CPR) and automated electronic defibrillator (AED) training and requires a hands-on skills assessment by an authorized instructor. (3-21-12)

**03. Maintaining Qualification.** To maintain qualification to administer immunizations, a pharmacist must annually complete a minimum of one (1) ~~clock~~ **CPE** hour ~~(0.1 CPEU)~~ of ACPE-approved CPE related to vaccines, immunizations, or their administration, which may also be applied to the general CPE requirements of these rules. ~~(3-21-12)~~ **( )**

**04. Student Pharmacist Administration.** A pharmacist may not delegate authority to administer immunizations; however, a student pharmacist who has satisfied the qualifications may administer immunizations under the direct supervision of a qualified immunizing pharmacist. (3-21-12)

- 05. Waste Disposal.** An immunizing pharmacist must properly dispose of used or contaminated supplies. (3-21-12)
- 06. Required Reports.** An immunizing pharmacist must report: (3-21-12)
- a.** Adverse events to the healthcare provider identified by the patient, if any, and to the Vaccine Adverse Event Reporting System (VAERS); and (3-21-12)
- b.** Administration of immunizations to the Idaho Immunization Reminder Information System (IRIS), as required. (3-21-12)
- 07. Required Resources.** A pharmacist must have a current copy of, or on-site access to, the CDC's Epidemiology and Prevention of Vaccine-Preventable Diseases. (3-21-12)
- 08. Vaccine Information Statements.** A corresponding, current CDC-issued VIS must be provided to the patient or the patient's representative for each administered immunization. (3-21-12)
- 09. Recordkeeping.** For each administered immunization, the following information must be collected and maintained in the patient profile: (3-21-12)
- a.** The patient's name, address, date of birth, and known allergies; (3-21-12)
- b.** The date of administration; (3-21-12)
- c.** The product name, manufacturer, dose, lot number, and expiration date of the vaccine; (3-21-12)
- d.** Documentation identifying the VIS provided; (3-21-12)
- e.** The site and route of administration and, if applicable, the dose in a series (e.g. one (1) of three (3)); (3-21-12)
- f.** The name of the patient's healthcare provider, if any; (3-21-12)
- g.** The name of the immunizing pharmacist and of the student pharmacist, if any; (3-21-12)
- h.** Adverse events observed or reported, if any, and documentation including at least the dates of any subsequent required reporting; and (3-21-12)
- i.** Completed informed consent forms. (3-21-12)
- 10. Emergencies.** (3-21-12)
- a.** An immunizing pharmacist must maintain an immediately retrievable emergency kit sufficiently stocked to manage an acute allergic reaction to an immunization. (3-21-12)
- b.** An immunizing pharmacist may initiate and administer auto-inject epinephrine, intramuscular diphenhydramine, or oral diphenhydramine to treat an acute allergic reaction to an immunization pursuant to guidelines issued by the American Pharmacy Association. (3-21-12)

**331. -- ~~345~~9. (RESERVED)**

**~~356~~0. STUDENT PHARMACIST: UTILIZATION AND PRACTICE LIMITATIONS.**

- 01. Activities.** A student pharmacist may engage in the practice activities of a pharmacist if: (3-21-12)
- a.** The activity is not specifically required to be performed only by a pharmacist; (3-21-12)

**b.** The activity is commensurate with the education and skill of the student pharmacist and performed under the supervision of a pharmacist; (3-21-12)

**c.** Any activity of a compounding, dispensing, or interpretive nature is checked by a pharmacist; and (3-21-12)

**d.** Any recording activity that requires the initial or signature of a pharmacist is countersigned by a pharmacist. (3-21-12)

**02. Unlawful Acceptance of Assignment.** A student pharmacist must not accept assignment of, or perform, any task or function connected with pharmacy operations unless the student pharmacist is authorized by the assigning pharmacist and the task or function meets the criteria set forth in this rule. (3-21-12)

**03. Identification of Student Pharmacists.** (3-21-12)

**a.** Each student pharmacist must be identified by a clearly visible name badge designating the individual as a student pharmacist. The name badge must contain the individual's printed first name and the title of student pharmacist, pharmacist intern, pharmacist extern, or another title that conveys the same meaning. (3-21-12)

**b.** Student pharmacists must identify themselves as a student pharmacist, pharmacist intern, or pharmacist extern on any phone calls initiated or received while on duty. (3-21-12)

~~356~~1. -- 399. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

**601. PHARMACY SPACE AND FIXTURES.**

**01. Preparation Area Standards.** A pharmacy must be well-lit, ventilated, temperature controlled, and have sufficient floor and counter space to avoid overcrowding and to allow the pharmacy to be maintained in a clean and sanitary condition appropriate for the safe preparation and compounding of prescriptions. (3-21-12)

**02. Equipment and Fixture Standards.** A pharmacy must be equipped with a sink with hot and cold water, appropriate fixtures for waste disposal, and refrigerated storage equipment of reasonable capacity. (3-21-12)

**03. Additional Retail Pharmacy Requirements.** A retail pharmacy that is new or remodeled after the effective date of this rule must: (3-21-12)

**a.** Provide and maintain a patient consultation area that affords the patient auditory and visual privacy, is accessible through an entrance and exit that does not require the patient to enter or traverse any part of the ~~prescription preparation or drug storage~~ secured areas of the pharmacy, and is compliant with the Americans with Disabilities Act; and (3-21-12)( )

**b.** Include a lavatory facility in the pharmacy restricted to pharmacy staff. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**631. INSTITUTIONAL FACILITY: EMERGENCY DRUG ACCESS AND PHARMACIST ABSENCE.**

The director must make advance arrangements necessary to facilitate continuity of patient care and for the provision of drugs to the medical staff and other authorized personnel of the institutional facility in emergencies and during the absences of a pharmacist in compliance with this rule. (3-21-12)

**01. Emergency Pharmacy Access.** If a drug is unavailable from any other authorized emergency



source in sufficient time to prevent risk of harm to a patient that would result from a delay in obtaining the drug and in the absence of a pharmacist from the premises of the institutional facility, it may be retrieved from an institutional pharmacy by an R.N. as follows: (3-21-12)

- a. One (1) R.N. may be designated per shift for emergency access to the pharmacy; (3-21-12)
- b. Access may only occur if controlled substances are secured in a locked cabinet or other appropriate means to prevent unauthorized access; and (3-21-12)
- c. Only a non-controlled substance may be removed and only in an amount necessary to treat a patient's immediate need until the pharmacy is again attended by a pharmacist. (3-21-12)

**02. Emergency Cabinets.** A cabinet or similar enclosure located outside an institutional pharmacy may be used for emergency access of drugs by an R.N. as follows: (3-21-12)

- a. The emergency cabinet must be accessible only by key, combination, or otherwise sufficiently secured to deny access to unauthorized persons; and (3-21-12)
- b. Drugs stocked in the emergency cabinet must be approved, prepared, stored, and handled as specified by these rules for emergency drug supplies. (3-21-12)

**03. Emergency Drug Access Conditions and Documentation.** Emergency access by an R.N. to an institutional pharmacy or an emergency cabinet or similar enclosure must be documented as follows: (3-21-12)

- a. Removal of a drug must be pursuant to a valid drug order; (3-21-12)
- b. Removal of a drug must be documented in a record that includes at least: (3-21-12)
  - i. The patient's name and location; (3-21-12)
  - ii. The name and strength of the drug; (3-21-12)
  - iii. The amount; (3-21-12)
  - iv. The date and time; and (3-21-12)
  - v. The signature initials or other unique identifier of the designated nurse. ~~(3-21-12)~~( )
- c. The removal record and a copy of the drug order must be left conspicuously in the pharmacy, emergency cabinet, or alternative location to facilitate prompt accuracy verification and initialing by a pharmacist. (3-21-12)

**04. Temporary Pharmacist Absence.** To accommodate periods of temporary absence of a pharmacist from the institutional pharmacy, pharmacy students and technicians may remain within the pharmacy under the following conditions: (3-21-12)

- a. No other person may be allowed access or entrance to the pharmacy; (3-21-12)
- b. Drugs or devices may not leave the pharmacy except if requested by, and immediately delivered to, the pharmacist; and (3-21-12)
- c. Neither student pharmacists nor technicians may remain in the pharmacy during periods of pharmacist absence from the institutional facility. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**640. INSTITUTIONAL FACILITY: OFFSITE PHARMACY PRACTICE STANDARDS.**

**01. Offsite Pharmacy Services.** If an institutional facility without an institutional pharmacy obtains drugs, devices, or other pharmacy services from outside the institutional facility, arrangements must be made to ensure that the offsite pharmacy provides services with sufficient professionalism, quality, and availability to adequately protect the safety of the patients and properly serve the needs of the facility. (3-21-12)

**02. Written Agreement.** The arrangements must be made in writing and must, at a minimum, specify that: (3-21-12)

**a.** An offsite pharmacist will act in the capacity of a part-time director; (3-21-12)

**b.** For nursing homes, on-call services by a pharmacist will be available at all times; (3-21-12)

**c.** The pharmacy will provide adequate storage facilities for drugs; and (3-21-12)

**d.** Drugs housed in an LTCF must be labeled as required by the ~~general provisions of these~~ **standard prescription drug labeling** rules and, unless maintained in an electronic record, must include a lot number for administration of recalls. ~~(3-21-12)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**750. DME OUTLET STANDARDS.**

**01. Policies and Procedures.** A DME outlet must adopt policies and procedures that establish: (3-21-12)

**a.** Operational procedures for the appropriate provision and delivery of equipment; (3-21-12)

**b.** Operational procedures for maintenance and repair of equipment; and (3-21-12)

**c.** Recordkeeping requirements for documenting the acquisition and provision of products. (3-21-12)

**02. ~~DME Outlet~~ Sale of Specified Prescription Drugs.** Registered DME outlets may hold for sale at retail the following prescription drugs: ~~(3-21-12)~~( )

**a.** Pure oxygen for human application; (3-21-12)

**b.** Nitrous oxide; (3-21-12)

**c.** Sterile sodium chloride; and (3-21-12)

**d.** Sterile water for injection. (3-21-12)

**03. Prescriber's Order Required.** Prescription drugs and devices may only be sold or delivered by a DME outlet upon the lawful order of a prescriber. DME outlets may hold drugs that are not prescription drugs for sale. (3-21-12)

## IDAPA 27 - BOARD OF PHARMACY

### 27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

#### DOCKET NO. 27-0101-1202

#### 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 54-1717, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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:

Post 2012 complete rule re-write, this rulemaking docket clarifies confusing, absent, and incomplete language. The rulemaking will add, strike and clarify definitions; add an acronym; harmonize terms; reduce license and registration posting requirement; clarify that technicians-in-training must obtain and maintain employment; clarify that student pharmacists and technician registrations may be cancelled if the registrants no longer meet the minimum requirements; clarify student pharmacist registration; clarify that a prescriber can designate "brand only" verbally; clarify who initials certain labels; clarify who is exempt from obtaining positive identification; reintroduce previously struck seven-day allowance for annual inventory; clarify that all drugs must be stored according to rule; clarify that prescriptions can be delivered to a correctional facility; clarify that a pharmacy can not open without a pharmacist-in-charge or a director; clarify the conditions when a pharmacist may be absent from a retail pharmacy while the pharmacy remains open; add a grandfathering provision to a security requirement; clarify the required public notification by a pharmacy of its change in hours open for business; clarify pharmacy permanent closing procedures; clarify that a director must notify the Board of a change in employment; clarify the conditions under which dispensing can occur by a hospital's emergency room; and clarify out-of-state mail service pharmacy's toll free access by patients, and reestablish conditions for drug returns.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 2, 2012 Idaho Administrative Bulletin, [Vol. 12-5, Page 82](#), and in the August 1, 2012 Idaho Administrative Bulletin, [Vol. 12-8, page 73](#), Docket No. 27-0101-1201.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mark Johnston, R.Ph., Executive Director, at (208) 334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 5th day of September, 2012.

Mark Johnston, R.Ph.  
Executive Director  
Board of Pharmacy  
1199 W. Shoreline Ln., Ste. 303  
P. O. Box 83720  
Boise, ID 83720-0067  
Telephone: (208) 334-2356  
FAX: (208) 334-3536

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 27-0101-1202**

**010. DEFINITIONS AND ABBREVIATIONS (A -- I).**

- 01. Accredited School or College of Pharmacy.** A school or college that meets the minimum standards of the ACPE and appears on its list of accredited schools or colleges of pharmacy. (3-21-12)
- 02. ACPE.** Accreditation Council for Pharmacy Education. (3-21-12)
- 03. Acute Care Hospital.** A facility in which concentrated medical and nursing care is provided by, or under the supervision of, physicians on a twenty-four (24) hour basis to inpatients experiencing acute illnesses. (3-21-12)
- 04. ADS -- Automated Dispensing and Storage.** A mechanical system that performs operations or activities, other than compounding or administration, relative to the storage, packaging, dispensing, or distribution of drugs and that collects, controls, and maintains transaction information. (3-21-12)
- 05. CDC.** United States Department of Health and Human Services, Centers for Disease Control and Prevention. (3-21-12)
- 06. Central Pharmacy.** A pharmacy within the state or a registered telepharmacy across state lines with which centralized pharmacy services have been contracted. (3-21-12)
- 07. Centralized Pharmacy Services.** The processing by a pharmacy of a request from another pharmacy to fill, refill, or dispense a prescription drug order or to perform processing functions such as prospective drug review. (3-21-12)
- 08. Change of Ownership.** A change of majority ownership or controlling interest of a drug outlet licensed or registered by the Board. (3-21-12)
- 09. Charitable Clinic or Center -- Authorized Personnel.** A person designated in writing and authorized by the qualifying charitable clinic or center's medical director or consultant pharmacist to perform specified duties within the charitable clinic or center under the supervision of a pharmacist, physician, dentist, optometrist, physician assistant, or an advanced practice professional nurse with prescriptive authority. (3-21-12)
- 10. Chart Order.** A lawful drug order for a drug or device entered on the chart or a medical record of an inpatient or resident of an institutional facility. (3-21-12)
- 11. CME.** Continuing medical education. (3-21-12)
- 12. COE -- Central Order Entry.** A pharmacy that processes information related to the practice of pharmacy, engages solely in centralized prescription processing but from which drugs are not dispensed, is physically located outside the institutional pharmacy of a hospital, and is part of a hospital system. (3-21-12)

- 13. Collaborative Pharmacy Practice.** A pharmacy practice whereby one (1) or more pharmacists jointly agree to work under a protocol authorized by one (1) or more prescribers to provide patient care and DTM services not otherwise permitted to be performed by a pharmacist under specified conditions or limitations. (3-21-12)
- 14. Collaborative Pharmacy Practice Agreement.** A written agreement between one (1) or more pharmacists and one (1) or more prescribers that provides for collaborative pharmacy practice. (3-21-12)
- 15. Continuous Quality Improvement Program.** A system of standards and procedures to identify and evaluate quality-related events and to constantly enhance the efficiency and effectiveness of the structures and processes of a pharmacy system. (3-21-12)
- 16. Correctional Facility.** Any place used for the confinement of persons charged with or convicted of an offense or otherwise confined under a court order. ( )
- ~~16.~~ **CPE.** Continuing pharmacy education. (3-21-12)
- ~~17.~~ **CPEU.** Continuing pharmacy education unit. (3-21-12)
- 18. DEA.** United States Drug Enforcement Administration. (3-21-12)
- 19. Distributor.** A supplier of drugs manufactured, produced, or prepared by others to persons other than the ultimate consumer. (3-21-12)
- 20. DME.** Durable medical equipment. (3-21-12)
- 21. Drug Order.** A prescription drug order issued in the unique form and manner permitted for a patient or resident of an institutional facility or as permitted for other purposes by these rules. Unless specifically differentiated, rules applicable to a prescription drug order are also applicable to a drug order. (3-21-12)
- 22. Drug Product Selection.** The act of selecting either a brand name drug product or its therapeutically equivalent generic. (3-21-12)
- 23. Drug Product Substitution.** Dispensing a drug product other than prescribed ~~without the express permission of the prescriber and patient.~~ (3-21-12) ( )
- 24. DTM -- Drug Therapy Management.** Selecting, initiating, or modifying drug treatment pursuant to a collaborative practice agreement. (3-21-12)
- 25. Emergency Drugs.** Drugs required to meet the immediate therapeutic needs of one (1) or more patients that are not available from any other authorized source in sufficient time to avoid risk of harm due to the delay that would result from obtaining the drugs from another source. (3-21-12)
- 26. Executive Director.** The Idaho State Board of Pharmacy executive director created by Sections 54-1713 and 54-1714, Idaho Code. (3-21-12)
- 27. FDA.** United States Food and Drug Administration. (3-21-12)
- 28. Flavoring Agent.** An additive used in food or drugs when the additive is used in accordance with the principles of good pharmacy practices and in the minimum quantity required to produce its intended effect. (3-21-12)
- 29. Floor Stock.** Drugs or devices not labeled for a specific patient that are maintained at a nursing station or other department of an institutional facility, excluding the pharmacy, for the purpose of administering to patients of the facility. (3-21-12)
- 30. FPGEC.** Foreign Pharmacy Graduate Examination Committee. ( )

**341.** **HIPAA.** Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191). (3-21-12)

**342.** **Hospital System.** A hospital or hospitals and at least one (1) on-site institutional pharmacy under common ownership. A hospital system may also include one (1) or more COE pharmacies under common ownership. (3-21-12)

**343.** **Idaho State Board of Pharmacy or Idaho Board of Pharmacy.** The terms Idaho State Board of Pharmacy, Idaho Board of Pharmacy, State Board of Pharmacy, and Board of Pharmacy are deemed synonymous and are used interchangeably to describe the entity created under the authority of Title 54, Chapter 17, Idaho Code. Unless specifically differentiated, “the Board” or “Board” also means the Idaho State Board of Pharmacy. (3-21-12)

**344.** **Individually Identifiable Health Information.** Information that is a subset of health information, including demographic information, collected from an individual and that: (3-21-12)

**a.** Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (3-21-12)

**b.** Relates to the past, present, or future physical or mental health or condition of an individual; or the past, present, or future payment for the provision of health care to an individual that: (3-21-12)

**i.** Identifies the individual; or (3-21-12)

**ii.** With respect to which there is a reasonable basis to believe the information can be used to identify the individual. (3-21-12)

**345.** **Institution Engaged in The Practice of Telepharmacy Across State Lines.** An institutional facility engaged in the practice of telepharmacy into Idaho that is an out-of-state hospital with an institutional pharmacy licensed or registered in another state or a COE pharmacy licensed or registered in another state that is part of a hospital system. (3-21-12)

**356.** **Institutional Pharmacy.** A pharmacy located in an institutional facility. (3-21-12)

## **011. DEFINITIONS AND ABBREVIATIONS (J -- R).**

**01.** **LTCF -- Long-Term Care Facility.** An institutional facility that provides extended health care to resident patients. (3-21-12)

**02.** **MPJE.** Multistate Pharmacy Jurisprudence Exam. (3-21-12)

**03.** **MTM -- Medication Therapy Management.** A distinct service or group of services that optimize therapeutic outcomes for individual patients. MTM services are independent of, but can occur in conjunction with, the provision or administration of a drug or a device and encompass a broad range of activities and responsibilities. The MTM service model in pharmacy practice includes the following five core elements: (3-21-12)

**a.** Medication therapy review; (3-21-12)

**b.** Personal medication record; (3-21-12)

**c.** Medication-related action plan; (3-21-12)

**d.** Intervention or referral, or both; (3-21-12)

**e.** Documentation and follow-up. (3-21-12)

**04.** **NABP.** National Association of Boards of Pharmacy. (3-21-12)

- 05. NAPLEX.** North American Pharmacists Licensure Examination. (3-21-12)
- 06. NDC.** National Drug Code. (3-21-12)
- 07. Non-Institutional Pharmacy.** A pharmacy located in a drug outlet that is not an institutional facility. (3-21-12)
- 08. Parenteral Admixture.** The preparation and labeling of sterile products intended for administration by injection. (3-21-12)
- 09. Pharmaceutical Care Services.** A broad range of pharmacist-provided cognitive services, activities and responsibilities intended to optimize drug-related therapeutic outcomes for patients. Pharmaceutical care services may be performed independent of, or concurrently with, the dispensing or administration of a drug or device and encompasses services provided by way of DTM under a collaborative practice agreement, pharmacotherapy, clinical pharmacy practice, pharmacist independent practice, and MTM. Nothing in these rules allows a pharmacist, beyond what is statutorily allowed or allowed by a collaborative practice agreement, to diagnose, prescribe, order lab tests, or conduct complete physical exams. Pharmaceutical care services are not limited to, but may include one (1) or more of the following, according to the individual needs of the patient: (3-21-12)
- a.** Performing or obtaining necessary assessments of the patient's health status, including the performance of health screening activities that may include, but are not limited to, obtaining finger-stick blood samples; (3-21-12)
  - b.** Reviewing, analyzing, evaluating, formulating or providing a drug utilization plan; (3-21-12)
  - c.** Monitoring and evaluating the patient's response to drug therapy, including safety and effectiveness; (3-21-12)
  - d.** Performing a comprehensive drug review to identify, resolve, and prevent drug-related problems, including adverse drug events; (3-21-12)
  - e.** Documenting the care delivered; (3-21-12)
  - f.** Communicating essential information or referring the patient when necessary or appropriate; (3-21-12)
  - g.** Providing counseling education, information, support services, and resources applicable to a drug, disease state, or a related condition or designed to enhance patient compliance with therapeutic regimens; (3-21-12)
  - h.** Conducting a drug therapy review consultation with the patient or caregiver; (3-21-12)
  - i.** Preparing or providing information as part of a personal health record; (3-21-12)
  - j.** Identifying processes to improve continuity of care and patient outcomes; (3-21-12)
  - k.** Providing consultative drug-related intervention and referral services; (3-21-12)
  - l.** Coordinating and integrating pharmaceutical care services within the broader health care management services being provided to the patient; and (3-21-12)
  - m.** Other services as allowed by law. (3-21-12)
- 10. Pharmacist Extern.** A person enrolled in an accredited school or college of pharmacy who is pursuing a professional degree in pharmacy ~~and is obtaining practical experience under the supervision of a pharmacist.~~ (3-21-12)( )

- 11. Pharmacist Intern.** A person who has successfully completed a course of study at an accredited school or college of pharmacy, has received a professional degree in pharmacy, and is obtaining practical experience under the supervision of a pharmacist. (3-21-12)
- 12. Pharmacy Operations.** Activities related to and including the preparation, compounding, distributing, or dispensing of drugs or devices from a pharmacy. (3-21-12)
- 13. PHI -- Protected Health Information.** Individually identifiable health information that is: (3-21-12)
- a.** Transmitted by electronic media (as defined by the HIPAA Privacy Rule at 45 CFR 160.103); (3-21-12)
  - b.** Maintained in electronic media; and (3-21-12)
  - c.** Transmitted or maintained in any other form or medium. (3-21-12)
  - d.** PHI excludes individually identifiable health information in: (3-21-12)
    - i.** Education records covered by the Family Education Right and Privacy Act, as amended (20 U.S.C. Section 1232g); (3-21-12)
    - ii.** Records described at 20 U.S.C. Section 1232g(a)(4)(B)(iv); and (3-21-12)
    - iii.** Employment records held by a covered entity (as defined by the HIPAA Privacy Rule at 45 CFR 160.103) in its role as an employer. (3-21-12)
- 14. PIC.** Pharmacist-in-charge. (3-21-12)
- 15. PMP.** Prescription Monitoring Program. (3-21-12)
- 16. Prepackaging.** The act of transferring a drug, manually or using an automated system, from a manufacturer's original container to another container prior to receiving a prescription drug order. (3-21-12)
- 17. Prescriber.** An individual currently licensed, registered, or otherwise authorized to prescribe and administer drugs in the course of professional practice. (3-21-12)
- 18. Prescriber Drug Outlet.** A drug outlet in which prescription drugs or devices are dispensed directly to patients under the supervision of a prescriber, except where delivery is accomplished only through on-site administration or the provision of drug samples. (3-21-12)
- 19. Readily Retrievable.** Records are considered readily retrievable if they are able to be completely and legibly produced upon request within seventy-two (72) hours. (3-21-12)
- 20. Relative Contraindication.** A condition that renders a particular treatment or procedure inadvisable, but not prohibitive. (3-21-12)
- 21. Remote Dispensing Site.** A licensed pharmacy staffed by one or more certified technicians at which telepharmacy services are provided through a supervising pharmacy. (3-21-12)
- 22. Retail Non-Pharmacy Drug Outlet.** A retail outlet that sells non-prescription drugs or devices that is not a pharmacy. (3-21-12)
- 23. Retail Pharmacy.** A community or other pharmacy that sells prescription drugs at retail and is open to the public for business. (3-21-12)
- 24. R.N.** Registered nurse. (3-21-12)



**012. DEFINITIONS AND ABBREVIATIONS (S -- Z).**

- 01. Sample.** A unit of a drug that is not intended to be sold and is intended to promote the sale of the drug. (3-21-12)
- 02. Secured Pharmacy.** The area of a drug outlet where prescription drugs are prepared, compounded, distributed, dispensed, or stored. (3-21-12)
- 03. Skilled Nursing Facility.** An institutional facility or a distinct part of an institutional facility that is primarily engaged in providing daily skilled nursing care and related services. (3-21-12)
- 04. Student Pharmacist.** A term inclusive of pharmacist intern and pharmacist extern if differentiation is not needed. (3-21-12)
- 05. Technician.** Unless specifically differentiated, a term inclusive of pharmacy technician, certified pharmacy technician, and technician-in-training to indicate an individual authorized by registration with the Board to perform routine pharmacy support services under the supervision of a pharmacist. (3-21-12)
- 06. Telepharmacy.** The use of telecommunications and information technologies in the practice of pharmacy to provide pharmaceutical care services to patients at a distance. (3-21-12)
- 07. Therapeutic Equivalent Drugs.** Products assigned an "A" code by the FDA in the Approved Drug Products with Therapeutic Equivalence Evaluations (Orange Book) and animal drug products published in the FDA Approved Animal Drug Products (Green Book). (~~3-21-12~~)(    )
- 08. Unit Dose.** Drugs packaged in individual, sealed doses with tamper-evident packaging (for example, single unit-of-use, blister packaging, unused injectable vials, and ampules). (3-21-12)
- 09. USP.** United States Pharmacopeia. (3-21-12)
- 10. USP-NF.** United State Pharmacopeia-National Formulary. (3-21-12)
- 11. VAWD -- Verified Accredited Wholesale Distributor.** An accreditation program for wholesale distributors offered through NABP. (3-21-12)
- 12. VDO -- Veterinary Drug Outlet.** A registered establishment that employs a qualified VDT to distribute prescription veterinary drugs pursuant to lawful orders of a veterinarian. (3-21-12)
- 13. VDT -- Veterinary Drug Technician.** A non-pharmacist qualified by registration with the Board to distribute prescription veterinary drugs in a VDO. (3-21-12)
- 14. Veterinary Drug Order.** A lawful order by a veterinarian issued pursuant to the establishment of a veterinarian-patient-client relationship as recognized by the American Veterinary Medical Association. (3-21-12)
- 15. VIS.** Vaccine Information Statement. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**019. LICENSE AND REGISTRATION: ~~POSTING~~ INSPECTION.**

Licenses and registrations issued under the Idaho Pharmacy and the Uniform Controlled Substances Acts must be ~~conspicuously posted~~ immediately retrievable at the licensed or registered location or at the drug outlet where the licensee or registrant is employed. (~~3-21-12~~)(    )

**01. Application Pending.** Pending receipt of the current registration or license from the Board, the confirmation of successful submission of an online application must be printed ~~and posted.~~ (3-21-12)( )

**02. Temporary Locations.** A licensee or registrant engaged in professional practice at a temporary or alternate location or in training must be able to produce written proof of licensure or registration immediately upon request. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**031. PHARMACIST LICENSURE BY EXAMINATION: FOREIGN PHARMACY GRADUATES.**

**01. Licensure Submission Requirements.** To be considered for licensure, a graduate of a school or college of pharmacy located outside of the United States must submit an application for licensure by examination, certification by the ~~Foreign Pharmacy Graduate Examination Committee (FPGEC),~~ and certification of completion of a minimum of fifteen hundred (1500) experiential hours. (3-21-12)( )

**02. Affidavit.** An Idaho State Board of Pharmacy Employer's Affidavit certifying the experiential hours of a foreign pharmacy graduate must be signed by a pharmacist licensed and practicing in the United States and submitted to the Board. The Board may also request verifiable business records to document the hours. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**036. STUDENT PHARMACIST REGISTRATION.**

**01. Registration Requirements.** ( )

**a.** ~~To be approved for and maintain registration as a pharmacist extern, the applicant must currently be enrolled and in good standing in an accredited school or college of pharmacy, pursuing a professional degree in pharmacy.~~ ( )

**b.** ~~To be approved for and maintain registration as a pharmacist intern, the applicant must be:~~ ( )

**i.** ~~A graduate of an accredited school or college of pharmacy within the United States or;~~ ( )

**ii.** ~~A graduate of a school or college of pharmacy located outside the United States and obtain certification by the FPGEC.~~ ( )

**02. Renewal.** ( )

**a.** ~~Unless revoked or suspended by the Board, a~~ pharmacist extern registration must be renewed annually ~~on~~ by July 15; however, the renewal fee will be waived for the duration of the ~~extern's~~ student's enrollment in the school or college of pharmacy and until July 15 following graduation. (3-21-12)( )

**b.** ~~A pharmacist intern registration must be renewed annually by June 30.~~ ( )

**03. Cancellation of Registration.** ~~Failure to maintain the requirements for student pharmacist registration will result in the cancellation of registration.~~ ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**041. TECHNICIAN-IN-TRAINING REGISTRATION.**

A person who has not obtained or maintained technician certification may apply for registration as a technician-in-training if the person satisfies all other requirements for registration as a technician and obtains and maintains employment as a technician-in-training. (3-21-12)(    )

**01. Duties.** Upon registration, a technician-in-training may perform any of the duties allowed by statute or rule to be delegated to a registered technician under the supervision of a pharmacist. (3-21-12)

**02. Renewal.** The registration of a technician-in-training ~~expires on~~ must be renewed by June 30, ~~and~~ but is only renewable two (2) times. (3-21-12)(    )

**03. Registration Expiration.** Upon the final expiration of a technician-in-training registration, a person must satisfy the technician certification and registration requirements of these rules to be lawfully employed as, or otherwise perform the duties of, a technician. (3-21-12)

**04. Cancellation of Registration.** Failure to maintain employment will result in the cancellation of the registration. (    )

**042. PHARMACY TECHNICIAN CERTIFICATION: CONTINUOUS EMPLOYMENT EXEMPTION.**

A technician registered with the Board and employed as a technician on June 30, 2009, is not required to obtain or maintain certification as a condition of registration renewal after June 30, 2009, as long as the registrant remains continuously employed as a technician by the same employer. If a registrant that qualifies for this exemption disrupts continuous employment as a technician with one employer, the technician registration will ~~correspondingly terminate on the date of employment termination~~ become invalid. The person must thereafter satisfy the certified pharmacy technician registration requirements of these rules to be lawfully employed as, or otherwise perform the duties of, a technician. (3-21-12)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**131. DRUG PRODUCT: SELECTION.**

Drug product selection is allowed only between therapeutic equivalent drugs. (3-21-12)

**01. Method of Brand Name Drug Product Selection Dispensing.** If a branded product must be dispensed only if "BRAND ONLY" is specified by the prescriber on the electronic prescription orders by any means that a brand name drug order or on the face of a paper prescription must be dispensed, then no drug order by a "BRAND ONLY" check box or a handwritten notation selection is permitted. (3-21-12)(    )

**02. Drug Product Selection Documentation.** If a generic is selected by a non-institutional pharmacy, the name of the drug and the manufacturer or the NDC number must be documented in the patient medication record. (3-21-12)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**140. STANDARD PRESCRIPTION DRUG LABELING.**

Unless otherwise directed by these rules, a prescription drug must be dispensed in an appropriate container that bears the following information: (3-21-12)

**01. Dispenser Information.** The name, address, and telephone number of the dispenser (person or business); (3-21-12)

**02. Prescription Serial Number.** The ~~prescription~~ Serial number; (3-21-12)(    )

- 03. Date.** The date the prescription is filled; (3-21-12)
- 04. Prescriber.** The name of the prescriber; (3-21-12)
- 05. Patient.** The name of the patient, and if the patient is an animal, the species; (3-21-12)
- 06. Drug Name and Strength.** Unless otherwise directed by the prescriber, the name and strength of the drug (the generic name and its manufacturer's name or the brand name); (3-21-12)
- 07. Quantity.** The quantity of item dispensed; (3-21-12)
- 08. Directions.** The directions for use; (3-21-12)
- 09. Cautionary Information.** Cautionary information as required or deemed appropriate for proper use and patient safety; (3-21-12)
- 10. Expiration.** An expiration date that is the lesser of: (3-21-12)
- a.** One (1) year from the date of dispensing; (3-21-12)
- b.** The manufacturer's original expiration date; (3-21-12)
- c.** The appropriate expiration date for a reconstituted suspension or beyond use date for a compounded product; or (3-21-12)
- d.** A shorter period if warranted; (3-21-12)
- 11. Refills.** The number of refills remaining, if any, or the last date through which the prescription is refillable; and (3-21-12)
- 12. Warning.** The warning: "Caution: State or federal law, or both, prohibits the transfer of this drug to any person other than the patient for whom it was prescribed." (3-21-12)
- 13. Pharmacist Identification.** The initials or other unique identifier of the dispensing pharmacist. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**142. PARENTERAL ADMIXTURE LABELING.**

If one or more drugs are added to a parenteral admixture the admixture's container must include a distinctive, supplementary label with at least the following information: (3-21-12)

- 01. Ingredient Information.** The name, amount, strength, and if applicable, the concentration of the drug additive and the base solution or diluent; (3-21-12)
- 02. Date and Time.** The date and time of the addition, or alternatively, the beyond use date and time; (3-21-12)
- 03. Preparer Identification.** The initials or other unique identifier of the *person who added the drug or drugs* pharmacist or preparing prescriber responsible for its accuracy; (3-21-12)( )
- 04. Prescribed Administration Regimen.** The rate or appropriate route of administration or both, as applicable; and (3-21-12)

05. **Special Instructions.** Any special handling, storage, or device-specific instructions. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**200. CONTROLLED SUBSTANCES: POSITIVE IDENTIFICATION REQUIRED.**

A potential recipient of a controlled substance must first be positively identified or the controlled substance must not be dispensed. (3-21-12)

**01. Positive Identification Presumed.** Positive identification is presumed and presentation of identification is not required if dispensing directly to the patient and if: (3-21-12)

a. The controlled substance will be paid for, in whole or in part, by an insurer; or (3-21-12)

b. The ~~dispenser is part of the institutional facility where the~~ patient is being treated at an institutional facility or is housed in a correctional facility. ~~(3-21-12)~~( )

c. The filled prescription is delivered to the patient's residence either by mail, common carrier, or an employee of the pharmacy. ( )

**02. Personal Identification.** Presentation of identification is also not required if the individual receiving the controlled substance is personally and positively known by a pharmacy or prescriber drug outlet staff member who is present and identifies the individual and the personal identification is documented by recording: (3-21-12)

a. The recipient's name (if other than the patient); (3-21-12)

b. A notation indicating that the recipient was known to the staff member; and (3-21-12)

c. The identity of the staff member making the personal identification. (3-21-12)

**03. Acceptable Identification.** The identification presented must include an unaltered photograph and signature and acceptable forms include a valid state or military driver's license or identification card and a valid passport. (3-21-12)

**04. Identification Documentation.** Documentation of the recipient's identification must be permanently linked to the record of the dispensed controlled substance and must include: (3-21-12)

a. A copy of the identification presented; or (3-21-12)

b. A record that includes: (3-21-12)

i. The recipient's name; (3-21-12)

ii. A notation of the type of identification presented; (3-21-12)

iii. The state, military branch, or other government entity that issued the identification; and (3-21-12)

iv. The identification number of the driver's license, identification card, or passport. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**206. CONTROLLED SUBSTANCES: INVENTORIES.**

**01. Annual Inventory of Stocks of Controlled Substances.** Each registrant must conduct an inventory of controlled substances on hand ~~at least every twelve (12) months~~ annually within seven (7) days of the date of the prior year's inventory in a form and manner that satisfies the inventory requirements of federal law. (3-21-12)( )

**02. Separate Inventories for Each Location.** A separate controlled substances inventory must be taken and retained at each registered location. (3-21-12)

**03. Inventory on PIC or Director Change.** A complete controlled substance inventory must be conducted in the event of a change of PIC ~~change or director~~ on or by the first day of employment of the incoming PIC or director. (3-21-12)( )

**04. Inventory After Discovery of Theft or Loss.** A complete controlled substance inventory must be conducted within forty-eight (48) hours of the discovery of a theft or reportable loss of a controlled substance. (3-21-12)

**05. Inventory on Addition to Schedule of Controlled Substances.** On the effective date of an addition of a substance to a schedule of controlled substances, each registrant that possesses that substance must take an inventory of the substance on hand, and thereafter, include the substance in each inventory. (3-21-12)

**06. Annual Inventory Compliance.** Complete inventories conducted as otherwise required by these rules may also be considered in complying with the annual inventory requirement. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**260. DRUG PRODUCT STORAGE.**

~~Prescription drugs, controlled substances, or other items restricted to sale, dispensing, or administration by, or under the supervision of, a pharmacist or other registrant~~ must be stored in accordance with USP-NF requirements in an area maintained and secured appropriately to safeguard product integrity and protect against product theft or diversion. (3-21-12)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**262. RESTRICTED RETURN OF DRUGS OR DEVICES.**

Once removed from the premises from which it was dispensed, a drug or prescription device must only be accepted for return under the conditions permitted by this rule or pursuant to the Legend Drug Donation Act and rules. (3-21-12)

**01. Qualifying Returns.** Unless dispensed in any manner inconsistent with the prescriber's instructions and returned for quarantine for destruction purposes only, a drug or prescription device that has been received from or delivered to the patient or the patient's representative is ineligible for return. Drugs or devices that may qualify for return include: (3-21-12)

**a.** Those intended for inpatients of an institutional facility that have been maintained in the custody and control of the institutional facility or dispensing pharmacy; and (3-21-12)

**b.** That are liquid or in unit dose or unit-of-use packaging and, if a controlled substance, returned from a hospital daily delivery system; and (3-21-12)

**c.** Those for which the following conditions are satisfied: (3-21-12)

- i. The drug was delivered by the dispensing pharmacy directly to the institutional facility or its authorized agent and subsequently stored in a suitable drug storage area that is inaccessible to patients; (3-21-12)
- ii. The drug is returned in an unopened manufacturer-sealed container or with other tamper-evident packaging intact; (3-21-12)
- iii. In the professional judgment of the pharmacist, the safety and efficacy of the drug has not been compromised; and (3-21-12)
- iv. A system is in place to track the restocked drug for purposes of a recall. (3-21-12)

**02. Marking Ineligible Returns.** Drugs or devices otherwise eligible for return that are or will become ineligible for any reason must be clearly marked "Not Eligible for Return" prior to leaving the institutional facility or upon discovery and before storing in an area with other eligible returns. (3-21-12)

**03. Consulting Pharmacy and PIC Responsibilities.** The pharmacy and its PIC are responsible for: ( )

- a.** Consulting with an institutional facility from which returns will be accepted; ~~and must ensure~~ ( )
- b.** Ensuring that the institutional facility has an employee trained and knowledgeable in the proper storage, use, and administration of drugs and devices; ~~at the institutional facility.~~ (3-21-12)( )
- c.** Reviewing, approving, and enforcing written protocols that will ensure compliance with the conditions necessary to allow returns; and ( )
- d.** Storing a copy of the protocols, as well as the written approval thereof, in an immediately retrievable fashion. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**503. PRESCRIPTION DELIVERY RESTRICTIONS.**

A pharmacist must not participate in any arrangement or agreement whereby filled prescriptions may be left at, picked up from, accepted by, or delivered to any place of business not registered as a pharmacy except that a pharmacist or a pharmacy, by means of its agent, may deliver filled prescriptions to the patient, the patient's residence, the hospital or other institutional facility in which the patient is convalescing, the correctional facility in which a patient is housed, or if a non-controlled substance, to the patient's licensed or registered healthcare provider. (3-21-12)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**600. PHARMACY REGISTRANT AND PIC OR DIRECTOR.**

**01. Designated PIC or Director Required.** A new pharmacy must have a designated PIC or director by the date of opening and must not ~~be without~~ thereafter allow a vacancy or lapse in appointment of a designated PIC or director to continue for more than thirty (30) sequential days. (3-21-12)( )

**02. Corresponding and Individual Responsibility.** The pharmacy registrant and the PIC or director each have corresponding and individual responsibility for compliance with the law and these rules in all aspects of the sale and the dispensing of drugs, devices, and other materials at the drug outlet, including the safe, accurate, secure,

and confidential handling and storage and the preparation, compounding, distributing, or dispensing of drugs and PHI. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**602. PHARMACY TECHNICAL EQUIPMENT.**

**01. Technical Equipment.** A pharmacy must have appropriate technical equipment to maintain the electronic recordkeeping requirements of these rules and any additional equipment and supplies required by its scope of practice to ensure public safety. (3-21-12)

**02. PHI Transmission Equipment Location.** A non-institutional pharmacy that uses a fax machine or other equipment to electronically send or receive PHI must locate and maintain the equipment within the secured pharmacy. (3-21-12)

**03. Separate Telephone.** ~~A pharmacy~~ **Pharmacies remodeled or constructed after the effective date of this rule** must have a separate and distinct telephone line from that of the business that must not be answerable by non-pharmacy personnel. If a pharmacy uses an automatic answering system, messages must not be retrieved or pharmacy services performed by non-pharmacy personnel. ~~(3-21-12)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**605. PHARMACY SECURITY.**

**01. Basic Security Standards.** A pharmacy must be constructed and equipped with adequate security, and at least while closed, utilize an alarm or other comparable monitoring system to protect its equipment, records, and supply of drugs, devices, and other restricted sale items from unauthorized access, acquisition, or use. Pharmacies without an alarm or other monitoring system as of the effective date of this rule must comply with this rule upon completion of a structural remodel. (3-21-12)

**02. Non-Institutional Pharmacy Security During Pharmacist Absence.** A non-institutional pharmacy must be closed for business and secured during all times a pharmacist is not present except: ( )

**a.** ~~for~~ **If a technician or student pharmacist is on to duty, to allow** brief pharmacist absences within the business establishment; or ( )

**b.** ~~To~~ perform professional services in the peripheral areas immediately outside of the pharmacy. ~~(3-21-12)~~( )

**03. Structural Security Requirements.** If a pharmacy is located within an establishment that is open to the public for business at times when a pharmacist is not present, the pharmacy must be totally enclosed in a manner sufficient to provide adequate security for the pharmacy, as required by this rule and approved by the Board. (3-21-12)

**a.** Pharmacy walls must extend to the roof or the pharmacy must be similarly secured from unauthorized entry. (3-21-12)

**b.** Solid core or metal doors are required **for new or remodeled pharmacies after the effective date of this rule.** ~~(3-21-12)~~( )

**c.** Doors and other access points must be constructed in a manner that the hinge hardware is accessible only from inside of the pharmacy and must be equipped with locking devices. (3-21-12)



**d.** If used, a “drop box” or “mail slot” allowing delivery of prescription drug orders to the pharmacy during hours closed must be appropriately secured against theft, and the pharmacy hours must be prominently visible to the person depositing the prescription drug order. Prescriptions must not be accepted for delivery to the pharmacy or for depositing in the drop box by non-pharmacy employees of a retail establishment. (3-21-12)

**04. Restricted Access to the Pharmacy.** No one must be allowed entrance to the closed and secured pharmacy unless under the direct supervision of a pharmacist or except as permitted by these rules for an institutional pharmacy. (3-21-12)

**606. PHARMACY NOTIFICATION AND ADVERTISING OF HOURS OPEN FOR BUSINESS.**

**01. Notification of Business Hours.** A pharmacy must notify the Board and prominently display the hours open to the public for business, if applicable, on or adjacent to its entrance and the entrance of the business establishment in which it is located if the open hours are different. (3-21-12)

**02. Notification of Change of Business Hours.** The Board and the public must be notified of changes to the hours that a pharmacy is open to the public for business, including changes resulting in differential hours, at least seven (7) days prior to the change except changes of hours in recognition of state holidays set forth in Section 73-108, Idaho Code. A change of hours for a holiday must be prominently posted for public notice at least seven (7) days in advance. ~~(3-21-12)~~ ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**609. PHARMACY CHANGE OF OWNERSHIP OR PERMANENT CLOSING.**

**01. Board Notification.** The registrant must notify the Board of a pharmacy's change of ownership or permanent closure at least ten (10) days prior to the event. The notice must include: (3-21-12)

**a.** The name and address of the pharmacy to be sold or closed; (3-21-12)

**b.** The date of sale or closure; (3-21-12)

**c.** The name and address of the business acquiring the prescription inventory; and (3-21-12)

**d.** The name and address of the pharmacy acquiring the prescription files and patient profiles in compliance with the records retention requirement. (3-21-12)

**02. Public Notice.** A registrant must notify the general public of the pharmacy's permanent closing at least ten (10) days prior to closing. The notice must include the date of closure and the new location of the prescription files. Notice must be provided by prominent posting in a public area of the pharmacy. (3-21-12)

**03. Pharmacy Signs.** Unless sold and transferred to another pharmacy operator, a registrant must remove or completely cover each sign and other exterior indication that the premises was a pharmacy within thirty (30) days after the date a pharmacy permanently ceases operations. (3-21-12)

**04. Transfer or Other Disposition of Drugs and Prescription Files.** The PIC of a pharmacy that ceases operation must: ( )

**a.** ~~A~~adequately secure and protect the prescription files from unlawful use or disclosure; ( )

**b.** Secure and protect the drug product inventory from diversion, deterioration, or other damage until lawful transfer or disposition; and ~~must~~ ( )

- ~~c.~~ ~~Retain~~ a closing inventory of controlled substances. (~~3-21-12~~)(    )

**05. Pharmacy Change of Ownership.** A change of ownership of a currently registered pharmacy will require the submission and approval of a new pharmacy registration application but will not require an onsite inspection prior to issuance of a pharmacy registration unless structural remodeling occurs. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**622. INSTITUTIONAL PHARMACY: DIRECTOR: MINIMUM RESPONSIBILITIES.**

Each institutional pharmacy must be supervised and directed by an Idaho-licensed pharmacist (referred to herein as “the director”) who is knowledgeable in, and thoroughly familiar with, the specialized functions of institutional pharmacies. The director is responsible for ensuring compliance with applicable law and for each activity of the institutional pharmacy, including at least the following: (3-21-12)

**01. Policies and Procedures.** In coordination with the appropriate institutional facility personnel, the adoption of policies and procedures with sufficient specificity regarding the handling, storage, and dispensing of drugs within the institution to protect public health and safety and ensure compliance with these rules and other applicable law. (3-21-12)

**02. Formulary or Drug List Development.** The participation in any development of a formulary or drug list for the facility. (3-21-12)

**03. Product Procurement.** The procurement of drugs, chemicals, biologicals, devices, or other products used by the institutional facility for patient pharmaceutical care services or for which a drug order is required. (3-21-12)

**04. Drug Use, Storage, and Accountability.** The safe and efficient dispensing, distribution, control, and secured storage of, and accountability for, drugs within the facility, including at least the following: (3-21-12)

**a.** Ensuring that drugs stored within the institutional pharmacy or in alternative secured storage areas have proper sanitation, temperature, light, ventilation, moisture control, segregation and security; (3-21-12)

**b.** Ensuring that outdated or other unusable drugs are identified and stored in a manner that prevents their distribution or administration prior to disposition; (3-21-12)

**c.** Ensuring that emergency drugs are in adequate and proper supply at designated locations; (3-21-12)

**d.** Ensuring that requirements applicable to the purchasing, storing, distribution, dispensing, recordkeeping, and disposal of controlled substances are met throughout the institution, including but not limited to, ensuring that controlled substances stored in surgery or emergency departments, nursing stations, ambulatory clinics, diagnostic laboratories or other locations outside of the pharmacy are inaccessible to unauthorized personnel; (3-21-12)

**e.** Ensuring accurate filling and labeling of containers from which drugs are to be administered or dispensed; (3-21-12)

**f.** Ensuring appropriate admixture of parenteral products, including serving in an advisory capacity for nursing personnel concerning incompatibility and the provision of proper incompatibility information; and (3-21-12)

**g.** Ensuring appropriate provision and maintenance, in both the pharmacy and patient care areas, of a sufficient inventory of antidotes and other emergency drugs, current antidote information, telephone numbers of regional poison control centers and other emergency assistance organizations, and other materials and information

determined necessary by the appropriate institutional facility personnel. (3-21-12)

**05. Emergency Drug Access Protocol.** In coordination with the appropriate institutional facility personnel, the development of an emergency drug access protocol and related training of R.N.s to ensure appropriate knowledge of the proper methods of access, removal of drugs, documentation, and other required procedures prior to the R.N.'s designation for access to emergency drug supplies. (3-21-12)

**06. Suspected Adverse Drug Reaction Reporting.** The reporting in a timely manner of a suspected adverse drug reaction to the ordering physician and to the appropriate institutional facility personnel. The director may use discretion and, if deemed necessary or advisable for public health or safety, report a suspected reaction to others such as MedWatch, the manufacturer, and the USP. (3-21-12)

**07. Records Maintenance.** The maintenance of records of institutional pharmacy transactions required by law. (3-21-12)

**08. Teaching, Research, and Patient Care Evaluation Programs.** The cooperation with any teaching and research programs and the participation in any patient care evaluation programs relating to pharmaceutical utilization and effectiveness within the institutional facility. (3-21-12)

**09. Continuous Quality Improvement Program.** The development and implementation of a continuous quality improvement program to review and evaluate pharmaceutical services and recommend improvements. (3-21-12)

**10. Director Change.** Both an outgoing and incoming director must report to the Board a change in the institutional pharmacy director within ten (10) days of the change. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**637. INSTITUTIONAL FACILITY: EMERGENCY OUTPATIENT DRUG DELIVERY BY HOSPITAL EMERGENCY ROOMS.**

~~A limited supply of drugs, not including Schedule II controlled substances, may be approved for delivery delivered by an RN to outpatients receiving being treated in a hospital emergency room treatment if stored in the emergency room pursuant to applicable law and these rules pertaining to emergency drug product storage and if accessed and delivered as permitted or restricted by this rule. as follows:~~ (3-21-12)( )

**01. Prerequisites:** ( )

**a.** In the presence of a prescriber, acting as an agent of that prescriber, or outside the presence of a prescriber, when there is no prescriber present in the hospital in accordance with applicable state and federal law; ( )

**b.** Pursuant to a valid drug order issued by a prescriber; ( )

**c.** When no pharmacist is on duty in the community; and ( )

**d.** When drugs are stored and accessed in accordance with applicable laws and rules. ( )

**02.** **Limitations.** No more than one (1) prepackaged container of the same drug may be delivered unless more than one (1) package is required to sustain the patient until the first available pharmacist is on duty in the community except that the full course of therapy for anti-infective medications may be provided. (3-21-12)

**023.** **Documentation.** Delivery ~~must occur only pursuant to a valid drug order and~~ must be documented as required by these rules for institutional facility emergency drug access. (3-21-12)( )

~~034.~~ **Labeling.** The institutional pharmacy must prepackage and affix Aa label ~~must be affixed~~ to the container with the information required by ~~these~~ the standard prescription drug labeling rules, except that blank spaces may be left for ~~outpatient dispensing~~ the names of the patient and prescriber and directions for use.  
(3-21-12)( )

~~04.~~ **R.N. Staff Personnel Only.** ~~This rule does not authorize any person other than an R.N. on a hospital's emergency room staff to prepare or deliver prescription drugs to outpatients receiving emergency treatment.~~  
(3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**713. -- ~~749.~~ (RESERVED)**

**730. OUT-OF-STATE MAIL SERVICE PHARMACY.**  
An out-of-state mail service pharmacy, during its regular hours of operation, but no less than forty (40) hours in six (6) days per week, provide a toll-free telephone service to facilitate communication between Idaho patients and a pharmacist with access to the patient records. This toll-free number must be disclosed on the prescription label for drugs dispensed to Idaho patients.  
( )

**731. -- 749. (RESERVED)**

## IDAPA 27 - BOARD OF PHARMACY

### 27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-1203

#### 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 54-1717, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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:

As requested by a rural, Idaho hospital to improve patient safety. This rulemaking docket would expand the use of self-service automated dispensing and storage systems (ADS) to hospital emergency rooms (ER).

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 2, 2012 Idaho Administrative Bulletin, [Vol. 12-5, Page 82](#), and in the August 1, 2012 Idaho Administrative Bulletin, [Vol. 12-8, page 73](#), Docket No. 27-0101-1201.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mark Johnston, R.Ph., Executive Director, at (208) 334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 7th day of September, 2012.

Mark Johnston, R.Ph.  
Executive Director  
Board of Pharmacy  
1199 W. Shoreline Ln., Ste. 303  
P. O. Box 83720  
Boise, ID 83720-0067  
Telephone: (208) 334-2356  
FAX: (208) 334-3536

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 27-0101-1203

**290. ADS SYSTEMS: MINIMUM STANDARDS.**

This rule establishes the minimum standards for the use of an ADS system to dispense and store drugs and devices. (3-21-12)

**01. System Registration and Approved Utilization Locations.** One or more ADS systems may be utilized by the following drug outlets if registered as required by the Board: (3-21-12)

**a.** In a pharmacy, remote dispensing site, or other ambulatory healthcare setting where utilization of the ADS system is under the adequate personal or electronic supervision of a pharmacist, as defined by these rules; (3-21-12)

**b.** In a prescriber drug outlet; and (3-21-12)

**c.** In an institutional facility. (3-21-12)

**02. Multiple System Documentation.** At least the following documentation must be maintained for each ADS system by the supervising pharmacy or prescriber drug outlet utilizing multiple ADS systems: (3-21-12)

**a.** The manufacturer's name and model of the ADS system; (3-21-12)

**b.** The state and, if applicable, federal ADS system registrations; and (3-21-12)

**c.** The name, address, and specific location where the ADS system is operational. (3-21-12)

**03. System Access, Monitoring, and Control.** Access to the ADS system must be monitored and controlled as follows: (3-21-12)

**a.** Proper identification controls, including electronic passwords or other coded identification, must be utilized and access control must be limited and authorized by the prescriber, PIC, or director; (3-21-12)

**b.** The prescriber, PIC, or director must be able to stop or change access at any time; (3-21-12)

**c.** The prescriber, PIC, or director must maintain a current and immediately retrievable list of persons who have access and the limits of that access; (3-21-12)

**d.** Review of user access reports must be conducted periodically to ensure that access by persons no longer employed has been appropriately disabled; and (3-21-12)

**e.** Access for maintenance or repair must be pre-approved by the prescriber, PIC, or director and must be performed under the continuous supervision of a person with appropriate access authorization. (3-21-12)

**04. System Security and Patient Confidentiality.** The ADS system must have adequate system security and safeguards to prevent and detect unauthorized access or use, maintain the integrity of patient records and prescription drug orders, and protect patient privacy. (3-21-12)

**05. System Filling, Stocking, Replenishing.** The filling, stocking, or replenishing of drugs into the ADS system must be accomplished by a pharmacist, technician, prescriber, or authorized prescriber drug outlet personnel. Timely pharmacist or prescriber verification of the accuracy of the filling, stocking, or replenishing of the ADS system must occur through a manual process, bar coding, or other electronic technology used for item identification. (3-21-12)

**06. Stocked Drug Documentation.** The ADS system must be able to generate a record on demand of drugs filled into the system that includes at least: (3-21-12)

**a.** The date; (3-21-12)

- b.** The drug name; (3-21-12)
- c.** The dosage form; (3-21-12)
- d.** The strength; (3-21-12)
- e.** The quantity; (3-21-12)
- f.** The drug expiration; (3-21-12)
- g.** The identity of the ADS system; and (3-21-12)
- h.** The name or initials of the authorized individual filling the ADS system and, if applicable, the verifying pharmacist or prescriber. (3-21-12)

**07. System Access and Transaction Documentation.** The ADS system must automatically document transactions and other events involving access to system contents that is immediately retrievable in written or electronic form and includes at least the following: (3-21-12)

- a.** The identity of the system and, if applicable, the component accessed; (3-21-12)
- b.** The name or other identification (e.g., electronic signature or unique identifier) of the person conducting the transaction; (3-21-12)
- c.** The type of transaction; (3-21-12)
- d.** The date and time of transaction; (3-21-12)
- e.** The name, strength, dosage form, and quantity of the drug or description of the medical device accessed; and (3-21-12)
- f.** If applicable, the name of the patient for whom the drug was ordered. (3-21-12)

~~**08. Supervising Pharmacy Documentation.** The supervising pharmacy of a remote dispensing site must retain separate records of transactions and prescriptions processed by each ADS system utilized. (3-21-12)~~

~~**09. ADS System Used for Tablets or Capsules.** The lot number of each drug contained in an ADS system used to store in bulk and to count tablets or capsules for dispensing must be retained in an immediately retrievable manner or posted on the device. (3-21-12)~~

~~**10. Prepackaged Bulk Drug Cartridges or Containers.** If the ADS system uses removable cartridges or containers to hold bulk drugs, the prepackaging of the cartridges or containers must occur at the pharmacy where the original inventory is maintained unless provided by an FDA-approved repackager that is licensed as a wholesaler. The prepackaged cartridges or containers may be sent to a remote dispensing site to be loaded into the ADS system by a pharmacist or a technician if: (3-21-12)~~

- a.** A pharmacist has verified the proper filling and labeling of the cartridge or container; (3-21-12)
- b.** The individual cartridges or containers are transported to the ADS system in a secure, tamper-evident container; and (3-21-12)
- c.** The ADS system utilizes technologies to ensure that the cartridges or containers are accurately loaded. (3-21-12)

~~**11. Self-Service ADS System Temperature Sensitive Drugs.** An ADS system may be used for self-service delivery of prescriptions if in compliance with this rule. (3-21-12)~~

~~a.~~ Products that are temperature sensitive must not be provided unless the system is able to maintain required storage conditions. (3-21-12)( )

~~b.~~ *Controlled substances and products that require additional preparation to be ready for patient use must not be provided.* (3-21-12)

~~c.~~ *The system must be physically attached to the pharmacy or prescriber drug outlet in a manner that access to areas used to stock the device are only accessible through the pharmacy or prescriber drug outlet by authorized personnel.* (3-21-12)

~~d.~~ *The system must be operational only during the operating hours of the pharmacy or prescriber drug outlet.* (3-21-12)

~~e.~~ *A self service ADS system must not be used to deliver new prescriptions outside of a prescriber drug outlet.* (3-21-12)

~~f.~~ *Prescribers utilizing a self service ADS system to deliver new prescriptions must provide patient counseling on all new medications.* (3-21-12)

~~g.~~ *The use of a self service ADS system for prescription refills must comply with laws applicable to the provision of refills by a pharmacy and must provide a patient notification with information about how counseling may be obtained.* (3-21-12)

~~12.~~ *Vending Machines. Only non-prescription medical supplies and drugs that are unrestricted for over-the-counter sale may be stored and sold in vending machines and are subject to inspection by the Board upon reasonable notice.* (3-21-12)

**291. ADS SYSTEMS: SELF-SERVICE SYSTEMS.**

The use of self-service ADS systems must comply with the ADS system minimum standards and the requirements of this rule. ( )

**01. System Requirements.** ( )

**a.** The system must only be operational: ( )

**i.** During the operating hours of the pharmacy, or prescriber drug outlet respectively; or ( )

**ii.** In a hospital's emergency room if no pharmacist is on duty in the community. ( )

**b.** The system must be substantially constructed, utilize adequate security, and be: ( )

**i.** Physically attached or immediately adjacent to the interior of the pharmacy, prescriber drug outlet, or hospital emergency room in a manner that access to areas used to stock the device are only accessible through the pharmacy, prescriber drug outlet, or hospital emergency room by authorized personnel; or ( )

**ii.** Located within the hospital's emergency room or prescriber drug outlet. ( )

**02. Dispensing Restrictions.** ( )

**a.** Products requiring additional preparation for patient use must be dispensed by the system directly to a prescriber or registered nurse for subsequent preparation and not dispensed directly to the patient. ( )

**b.** A pharmacy system may only dispense drugs or devices that have been previously dispensed to the patient. ( )

**c.** Controlled substances are prohibited in a pharmacy or prescriber drug outlet system. ( )



d. Drugs must be prepackaged for use in hospital emergency room systems and no more than one (1) prepackaged container of the same drug may be delivered unless more than one (1) package is required to sustain the patient until the first available pharmacist is on duty in the community except that the full course of therapy for anti-infective medications may be provided. ( )

e. Hospital emergency room systems must only dispense to hospital emergency room patients. ( )

f. Hospital emergency room systems vouchers or their equivalent must expire within twenty-four (24) hours. ( )

03. Counseling. ( )

a. When dispensed via a system in a prescriber drug outlet or a hospital's emergency room, a patient must receive counseling prior to receiving drugs or devices that have not been previously dispensed to the patient. ( )

b. Refilled or renewed drugs dispensed via a system must include written notification of how counseling may be obtained. ( )

04. Packaging and Labeling. Drugs dispensed via a system must be compliant with the standard prescription drug labeling rule, the prescription drug packaging rule, and other pertinent rules. ( )

**29+2. ADS SYSTEMS: INSTITUTIONAL FACILITIES.**

Institutional facilities utilizing one or more ADS systems must ensure compliance with the ADS system minimum standards, ~~as applicable~~, and the requirements of this rule. (3-21-12)( )

**01. Product Packaging and Labeling.** Except as provided herein, drugs stored in the ADS system must be contained in the manufacturers' sealed, original packages or in prepackaged unit-of-use containers (e.g., unit dose tablet/capsule, tube of ointment, inhaler, etc.) and must be labeled as required by these rules. Exceptions to these packaging requirements include: (3-21-12)

**a.** Injectable drugs stored in a multi-dose vial (e.g., heparin) from which the drug may be withdrawn into a syringe or other delivery device for single patient use; or (3-21-12)

**b.** OTC products stored in a manufacturers' sealed, multi-dose container (e.g., antacids, analgesics) from which the drug may be withdrawn and placed into an appropriate container for single patient use. (3-21-12)

**02. Pharmacist Review.** A pharmacist must review the drug order prior to any removal from the system of a drug intended for immediate patient administration except if: (3-21-12)

**a.** The system is being used as an after-hours cabinet for drug dispensing in the absence of a pharmacist; (3-21-12)

**b.** The system is being used in place of an emergency kit; (3-21-12)

**c.** The system is being used to provide access to emergency drugs and only a quantity sufficient is removed to meet the immediate need of the patient; (3-21-12)

**d.** The drug is a subsequent dose from a previously reviewed drug order. ~~Any change made to the drug order requires a new approval by a pharmacist prior to removing the drug; or~~ (3-21-12)( )

e. The prescriber controls the drug administration process in procedural areas. ( )

**03. Product Drug Returns.** The ADS system must provide a mechanism for securing and accounting for drugs removed from and subsequently returned to the system ~~(e.g., a return bin)~~. (3-21-12)

~~a.~~ A drug removed from a system but not administered to a patient ~~must~~ may be returned ~~to the~~

~~pharmacy immediately or maintained in a manner that prevents access to~~ as follows if unopened, sealed, intact and stored in compliance with the ~~returned~~ drug ~~except~~ product storage rule ~~to return it to the pharmacy and except:~~

(3-21-12)( )

**a.** The pharmacy, immediately; ( )  
**b.** The ADS system for immediate reuse by authorized personnel in hospitals utilizing bar code scanning technology at the bedside or the ADS system; ( )

**c.** The ADS return bin, until; ( )  
**i.** Returned to the pharmacy; or ( )  
**ii.** Returned to the ADS system; or ( )

**d.** An alternative, secure storage area until return to the pharmacy or the ADS is feasible only if the drug; ( )

**i.** ~~Items that are~~ Is too large or bulky to be inserted into the system's return bin; (3-21-12)( )  
**ii.** ~~Items~~ Requiring refrigeration; or (3-21-12)( )  
**iii.** Requires immediate accessibility for ~~L~~ limited critical ~~care items for which inaccessibility would compromise~~ patient care. (3-21-12)( )

~~b.~~ A removed drug or device must not be returned directly to the system for immediate reissue or (3-21-12)

~~c.~~ Once removed, a drug or device must not be reused or reissued except: (3-21-12)

~~i.~~ Drugs stored after dispensing under the drug storage conditions required by these rules; (3-21-12)

~~ii.~~ As supervised by the pharmacist; and (3-21-12)

~~iii.~~ In unopened, sealed, intact, and unaltered containers. (3-21-12)

**04.** Wasted ~~and Discarded Drugs~~ **Controlled Substances.** If wasted before completing the transaction, ~~the~~ ADS system must provide a mechanism for ~~securing and~~ accounting for wasted ~~or discarded drugs~~ controlled substances. Waste documentation must include at least the following: (3-21-12)( )

**a.** Date and time of transaction; (3-21-12)

**b.** Patient name and location; (3-21-12)

**c.** Drug and dose; (3-21-12)

~~d.~~ Quantity of transaction; (3-21-12)

~~ed.~~ Wasted amount; (3-21-12)

~~f.~~ Beginning and ending count (for controlled substances only); (3-21-12)

~~ge.~~ Nurse Authorized user identification; and (3-21-12)( )

~~hf.~~ Witness identification, ~~if needed.~~ (3-21-12)( )

**05.** **Supervising Pharmacy Identification.** If used in a nursing home, the ADS system must be clearly

marked with the name, address, and phone number of the supervising pharmacy and pharmacist-in-charge. (3-21-12)

**293. VENDING MACHINES.**

Only non-prescription medical supplies and drugs that are unrestricted for over-the-counter sale may be stored and sold in vending machines and are subject to inspection by the Board upon reasonable notice. ( )

~~294.~~ -- 299. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

**632. INSTITUTIONAL FACILITY: EMERGENCY DRUG SUPPLY PREPARATION AND MONITORING.**

The director or PIC and the appropriate institutional facility personnel must jointly approve and develop a listing of drugs, by identity and quantity, for inclusion in an emergency cabinet, emergency kit, crash cart, or other similar resource that is specifically approved for use by that type of institutional facility and for delivery to patients receiving emergency treatment. In addition to other applicable provisions of these rules, approved drugs are subject to the following limitations, restrictions, and requirements: (3-21-12)

**01. Prepackaged Amounts.** The drugs must be prepackaged in amounts sufficient to satisfy immediate therapeutic requirements only, except when delivered in a hospital emergency room consistent with these rules; (~~3-21-12~~)( )

**02. Content Labeling.** The drugs must be labeled as required by these rules for prepackaged products and with any additional information as may be required to prevent misunderstanding or risk of harm to patients; (3-21-12)

**03. Access Documentation.** Access to the emergency drugs must be documented by drug orders and, if applicable, proofs of use; (3-21-12)

**04. Drug Expiration Monitoring.** Drug expiration dates must be monitored and the drugs replaced as needed to ensure the emergency drug supply contains no outdated products; and (3-21-12)

**05. Regular Inventory and Inspection.** Emergency drug supplies must be regularly inventoried and inspected to ensure that they are properly stored and secured against pilferage or tampering. (3-21-12)

## IDAPA 27 - BOARD OF PHARMACY

### 27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-1204

#### 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 54-1717, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

To clarify the practice limitations of pharmacists and the members of a committee. To clarify that a pharmacist may order lab tests and substitute drug product in certain circumstances, but may not conduct physical examinations or engage in the practice of medicine; and to require that a pharmacist serve on a skilled nursing facility's quality assurance and assessment committee.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 2, 2012 Idaho Administrative Bulletin, [Vol. 12-5, Page 82](#), and in the August 1, 2012 Idaho Administrative Bulletin, [Vol. 12-8, page 73](#), Docket No. 27-0101-1201.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mark Johnston, R.Ph., Executive Director, at (208) 334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 6th day of September, 2012.

Mark Johnston, R.Ph.  
Executive Director  
Board of Pharmacy  
1199 W. Shoreline Ln., Ste. 303  
P. O. Box 83720  
Boise, ID 83720-0067  
Telephone: (208) 334-2356  
FAX: (208) 334-3536

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 27-0101-1204**

**011. DEFINITIONS AND ABBREVIATIONS (J -- R).**

- 01. LTCF -- Long-Term Care Facility.** An institutional facility that provides extended health care to resident patients. (3-21-12)
- 02. MPJE.** Multistate Pharmacy Jurisprudence Exam. (3-21-12)
- 03. MTM -- Medication Therapy Management.** A distinct service or group of services that optimize therapeutic outcomes for individual patients. MTM services are independent of, but can occur in conjunction with, the provision or administration of a drug or a device and encompass a broad range of activities and responsibilities. The MTM service model in pharmacy practice includes the following five core elements: (3-21-12)
- a.** Medication therapy review; (3-21-12)
  - b.** Personal medication record; (3-21-12)
  - c.** Medication-related action plan; (3-21-12)
  - d.** Intervention or referral, or both; (3-21-12)
  - e.** Documentation and follow-up. (3-21-12)
- 04. NABP.** National Association of Boards of Pharmacy. (3-21-12)
- 05. NAPLEX.** North American Pharmacists Licensure Examination. (3-21-12)
- 06. NDC.** National Drug Code. (3-21-12)
- 07. Non-Institutional Pharmacy.** A pharmacy located in a drug outlet that is not an institutional facility. (3-21-12)
- 08. Parenteral Admixture.** The preparation and labeling of sterile products intended for administration by injection. (3-21-12)
- 09. Pharmaceutical Care Services.** A broad range of pharmacist-provided cognitive services, activities and responsibilities intended to optimize drug-related therapeutic outcomes for patients. Pharmaceutical care services may be performed independent of, or concurrently with, the dispensing or administration of a drug or device and encompasses services provided by way of DTM under a collaborative practice agreement, pharmacotherapy, clinical pharmacy practice, pharmacist independent practice, and MTM. Except as permitted pursuant to a collaborative practice agreement, nothing in these rules allows a pharmacist, beyond what is statutorily allowed ~~or allowed by a collaborative practice agreement,~~ to engage in the unlicensed practice of medicine or to diagnose, prescribe, ~~order lab tests,~~ or conduct ~~complete~~ physical examinations. Pharmaceutical care services are not limited to, but may include one (1) or more of the following, according to the individual needs of the patient: ~~(3-21-12)~~ ( )
- a.** Performing or obtaining necessary assessments of the patient's health status, including the performance of health screening activities that may include, but are not limited to, obtaining finger-stick blood samples; (3-21-12)
  - b.** Reviewing, analyzing, evaluating, formulating or providing a drug utilization plan; (3-21-12)
  - c.** Monitoring and evaluating the patient's response to drug therapy, including safety and effectiveness; (3-21-12)

- d.** Performing a comprehensive drug review to identify, resolve, and prevent drug-related problems, including adverse drug events; (3-21-12)
- e.** Documenting the care delivered; (3-21-12)
- f.** Communicating essential information or referring the patient when necessary or appropriate; (3-21-12)
- g.** Providing counseling education, information, support services, and resources applicable to a drug, disease state, or a related condition or designed to enhance patient compliance with therapeutic regimens; (3-21-12)
- h.** Conducting a drug therapy review consultation with the patient or caregiver; (3-21-12)
- i.** Preparing or providing information as part of a personal health record; (3-21-12)
- j.** Identifying processes to improve continuity of care and patient outcomes; (3-21-12)
- k.** Providing consultative drug-related intervention and referral services; (3-21-12)
- l.** Coordinating and integrating pharmaceutical care services within the broader health care management services being provided to the patient; and (3-21-12)
- m.** Other services as allowed by law. (3-21-12)
- 10. Pharmacist Extern.** A person enrolled in an accredited school or college of pharmacy who is pursuing a professional degree in pharmacy and is obtaining practical experience under the supervision of a pharmacist. (3-21-12)
- 11. Pharmacist Intern.** A person who has successfully completed a course of study at an accredited school or college of pharmacy, has received a professional degree in pharmacy, and is obtaining practical experience under the supervision of a pharmacist. (3-21-12)
- 12. Pharmacy Operations.** Activities related to and including the preparation, compounding, distributing, or dispensing of drugs or devices from a pharmacy. (3-21-12)
- 13. PHI -- Protected Health Information.** Individually identifiable health information that is: (3-21-12)

  - a.** Transmitted by electronic media (as defined by the HIPAA Privacy Rule at 45 CFR 160.103); (3-21-12)
  - b.** Maintained in electronic media; and (3-21-12)
  - c.** Transmitted or maintained in any other form or medium. (3-21-12)
  - d.** PHI excludes individually identifiable health information in: (3-21-12)

    - i.** Education records covered by the Family Education Right and Privacy Act, as amended (20 U.S.C. Section 1232g); (3-21-12)
    - ii.** Records described at 20 U.S.C. Section 1232g(a)(4)(B)(iv); and (3-21-12)
    - iii.** Employment records held by a covered entity (as defined by the HIPAA Privacy Rule at 45 CFR 160.103) in its role as an employer. (3-21-12)
- 14. PIC.** Pharmacist-in-charge. (3-21-12)

15. **PMP.** Prescription Monitoring Program. (3-21-12)
16. **Prepackaging.** The act of transferring a drug, manually or using an automated system, from a manufacturer's original container to another container prior to receiving a prescription drug order. (3-21-12)
17. **Prescriber.** An individual currently licensed, registered, or otherwise authorized to prescribe and administer drugs in the course of professional practice. (3-21-12)
18. **Prescriber Drug Outlet.** A drug outlet in which prescription drugs or devices are dispensed directly to patients under the supervision of a prescriber, except where delivery is accomplished only through on-site administration or the provision of drug samples. (3-21-12)
19. **Readily Retrievable.** Records are considered readily retrievable if they are able to be completely and legibly produced upon request within seventy-two (72) hours. (3-21-12)
20. **Relative Contraindication.** A condition that renders a particular treatment or procedure inadvisable, but not prohibitive. (3-21-12)
21. **Remote Dispensing Site.** A licensed pharmacy staffed by one or more certified technicians at which telepharmacy services are provided through a supervising pharmacy. (3-21-12)
22. **Retail Non-Pharmacy Drug Outlet.** A retail outlet that sells non-prescription drugs or devices that is not a pharmacy. (3-21-12)
23. **Retail Pharmacy.** A community or other pharmacy that sells prescription drugs at retail and is open to the public for business. (3-21-12)
24. **R.N.** Registered nurse. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**130. DRUG PRODUCT: SUBSTITUTION.**

Drug product substitutions are allowed only *in situations requiring compliance with* **as follows:** ( )

**01. Hospital.** Pursuant to a formulary or drug list prepared by the pharmacy and therapeutics committee of a hospital; ~~or~~ ( )

**02. Skilled Nursing Facility.** At the direction of the quality assessment and assurance committee of a skilled nursing facility consisting of the director of nursing services, a physician designated by the facility, a consultant pharmacist, and at least ~~three~~ two (~~3~~2) other members of the facility's staff; ~~or~~ (3-21-12)( )

**03. Drug Shortage.** Upon a drug shortage, a pharmacist, using his best professional judgment, without contacting the prescriber, may substitute an alternative dose of a prescribed drug, so long as the prescriber's directions are also modified, to equate to an equivalent amount of drug dispensed as is prescribed. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**500. UNPROFESSIONAL CONDUCT.**

The following acts or practices by a pharmacist, student pharmacist, or technician are declared to be specifically, but not by way of limitation, unprofessional conduct and conduct contrary to the public interest. (3-21-12)

- 01. Unethical Conduct.** Conduct in the practice of pharmacy or in the operation of a pharmacy that may reduce the public confidence in the ability and integrity of the profession of pharmacy or endangers the public health, safety, and welfare. A violation of this section includes committing fraud, misrepresentation, negligence, concealment, or being involved in dishonest dealings, price fixing, or breaching the public trust with respect to the practice of pharmacy. (3-21-12)
- 02. Lack of Fitness.** A lack of fitness for professional practice due to incompetency, personal habits, drug or alcohol dependence, physical or mental illness, or for any other cause that endangers public health, safety, or welfare. (3-21-12)
- 03. On-Duty Intoxication or Impairment.** Intoxication, impairment, or consumption of alcohol or drugs while on duty, including break periods after which the individual is expected to return to work, or prior to reporting to work. (3-21-12)
- 04. Diversion of Drug Products and Devices.** Supplying or diverting drugs, biologicals, and other medicines, substances, or devices legally sold in pharmacies that allows the circumvention of laws pertaining to the legal sale of these articles. (3-21-12)
- 05. Unlawful Possession or Use of Drugs.** Possessing or using a controlled substance without a lawful prescription drug order. A failed drug test creates a rebuttable presumption of a violation of this rule. (3-21-12)
- 06. Prescription Drug Order Noncompliance.** Failing to follow the instructions of the person writing, making, or ordering a prescription as to its refills, contents, or labeling except as provided in these rules. ~~(3-21-12)~~(\_\_\_\_)
- 07. Failure to Confer.** Failure to confer with the prescriber when necessary or appropriate or filling a prescription if necessary components of the prescription drug order are missing or questionable. (3-21-12)
- 08. Excessive Provision of Controlled Substances.** Providing a clearly excessive amount of controlled substances. Evidentiary factors of a clearly excessive amount include, but are not limited to, the amount of controlled substances furnished and previous ordering patterns (including size and frequency of orders). (3-21-12)
- 09. Failure to Counsel or Offer Counseling.** Failing to counsel or offer counseling, unless specifically exempted or refused. The failure to retain appropriate documentation evidencing compliance with patient counseling requirements creates a rebuttable presumption of a violation of this rule. (3-21-12)
- 10. Substandard, Misbranded, or Adulterated Products.** Manufacturing, compounding, delivering, dispensing, or permitting to be manufactured, compounded, delivered, or dispensed substandard, misbranded, or adulterated drugs or preparations or those made using secret formulas. (3-21-12)
- 11. Prescriber Incentives.** Allowing a commission or rebate to be paid, or personally paying a commission or rebate, to a person writing, making, or otherwise ordering a prescription. (3-21-12)
- 12. Exclusive Arrangements.** Participation in a plan or agreement that compromises the quality or extent of professional services or limits access to provider facilities at the expense of public health or welfare. (3-21-12)
- 13. Failure to Report.** Failing to report to the Board any violation of statutes or rules pertaining to the practice of pharmacy or any act that endangers the health, safety, or welfare of patients or the public. (3-21-12)
- 14. Failure to Follow Board Order.** Failure to follow an order of the Board. (3-21-12)



## IDAPA 27 - BOARD OF PHARMACY

### 27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

#### DOCKET NO. 27-0101-1205 (FEE RULE)

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 54-1717, 54-1720 and 54-1743, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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:

Rural Idaho hospitals, as well as industry, have asked for more forms of the practice of pharmacy to be allowed into Idaho by nonresidents in order to improve public safety. As an example, more hospitals would be able to obtain "after hours" centralized pharmacy services when their own pharmacists are not on duty, increasing the speed and accuracy with which institutionalized patients receive new medications. The rulemaking expands the definition of central pharmacy to central drug outlet or pharmacist; expands the definition of centralized pharmacy services; moves an adapted definition of mail service pharmacy to rule; strikes a definition no longer used; expands and establishes criteria for the statutorily authorized pharmacist registration category; converts current out-of-state and across state lines drug outlet categories into an expanded nonresident drug outlet category and establishes registration criteria; defines when a pharmacist may be registered versus licensed; strikes extraneous language; requires all nonresident pharmacies and central drug outlets to register a PIC or director in Idaho; expands centralized pharmacy services practice standards; and reduces the requirements of a policy and procedures manual.

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

The rulemaking establishes initial licensing (\$500) and annual renewal (\$250) fees for nonresident central drug outlets, pursuant to the authority in Sections 54-1720 and 54-1743, Idaho Code.

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

Expected \$150,000 additional annual income, however, the Board will assume addition licensing, registration, and investigational costs.

**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 May 2, 2012 Idaho Administrative Bulletin, [Vol. 12-5, Page 82](#), and in the August 1, 2012 Idaho Administrative Bulletin, [Vol. 12-8, page 73](#), Docket No. 27-0101-1201.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mark Johnston, R.Ph., Executive Director, at (208) 334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 5th day of September, 2012.

Mark Johnston, R.Ph.  
Executive Director  
Board of Pharmacy  
1199 W. Shoreline Ln., Ste. 303  
P. O. Box 83720  
Boise, ID 83720-0067  
Telephone: (208) 334-2356  
FAX: (208) 334-3536

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**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 27-0101-1205**

**010. DEFINITIONS AND ABBREVIATIONS (A -- I).**

**01. Accredited School or College of Pharmacy.** A school or college that meets the minimum standards of the ACPE and appears on its list of accredited schools or colleges of pharmacy. (3-21-12)

**02. ACPE.** Accreditation Council for Pharmacy Education. (3-21-12)

**03. Acute Care Hospital.** A facility in which concentrated medical and nursing care is provided by, or under the supervision of, physicians on a twenty-four (24) hour basis to inpatients experiencing acute illnesses. (3-21-12)

**04. ADS -- Automated Dispensing and Storage.** A mechanical system that performs operations or activities, other than compounding or administration, relative to the storage, packaging, dispensing, or distribution of drugs and that collects, controls, and maintains transaction information. (3-21-12)

**05. CDC.** United States Department of Health and Human Services, Centers for Disease Control and Prevention. (3-21-12)

**06. Central ~~Pharmacy~~ Drug Outlet.** A ~~resident or nonresident~~ pharmacy, ~~within the state or a registered telepharmacy across state lines with which~~ drug outlet or business entity employing or contracting pharmacists to perform centralized pharmacy services ~~have been contracted.~~ (3-21-12)( )

**07. Central Pharmacist.** A pharmacist performing centralized pharmacy services. ( )

**08. Central Pharmacy.** A pharmacy performing centralized pharmacy services. ( )

**079. Centralized Pharmacy Services.** The processing by a ~~pharmacy~~ central drug outlet or central pharmacist of a request from another pharmacy to fill, refill, or dispense a prescription drug order, ~~or to~~ perform processing functions, ~~such as prospective drug review~~ or provide cognitive or pharmaceutical care services. Each function may be performed by the same or different persons and at the same or different locations. (3-21-12)( )

**a.** Intake includes all those processes involved in the receipt of the original prescription drug order at a pharmacy, as allowed by law. ( )

**b.** Processing means performing activities that may include, but are not limited to, prospective drug review, data entry, prescriber consultations, patient counseling, refill authorizations, and related services. ( )

**c.** Fulfillment involves manual filling or refilling the prescription drug order, including product

selection, compounding, packaging, labeling, and otherwise preparing the prescription for delivery or administration to the patient. ( )

d. Dispensing involves the delivery of the filled or refilled prescription drug to the patient or the patient's representative, with counseling as required by law. ( )

e. Administrative services involve business administration and billing services, including data entry, claims submissions, claims resolution, claims adjudication, and related services. ( )

f. Pharmaceutical care services may be provided as needed or as required by law. ( )

~~08~~**10. Change of Ownership.** A change of majority ownership or controlling interest of a drug outlet licensed or registered by the Board. (3-21-12)

~~09~~**11. Charitable Clinic or Center -- Authorized Personnel.** A person designated in writing and authorized by the qualifying charitable clinic or center's medical director or consultant pharmacist to perform specified duties within the charitable clinic or center under the supervision of a pharmacist, physician, dentist, optometrist, physician assistant, or an advanced practice professional nurse with prescriptive authority. (3-21-12)

~~10~~**2. Chart Order.** A lawful drug order for a drug or device entered on the chart or a medical record of an inpatient or resident of an institutional facility. (3-21-12)

~~11~~**3. CME.** Continuing medical education. (3-21-12)

~~12~~**4. COE -- Central Order Entry.** A pharmacy that processes information related to the practice of pharmacy, engages solely in centralized prescription processing but from which drugs are not dispensed, is physically located outside the institutional pharmacy of a hospital, and is part of a hospital system. (3-21-12)

~~13~~**5. Collaborative Pharmacy Practice.** A pharmacy practice whereby one (1) or more pharmacists jointly agree to work under a protocol authorized by one (1) or more prescribers to provide patient care and DTM services not otherwise permitted to be performed by a pharmacist under specified conditions or limitations. (3-21-12)

~~14~~**6. Collaborative Pharmacy Practice Agreement.** A written agreement between one (1) or more pharmacists and one (1) or more prescribers that provides for collaborative pharmacy practice. (3-21-12)

~~15~~**7. Continuous Quality Improvement Program.** A system of standards and procedures to identify and evaluate quality-related events and to constantly enhance the efficiency and effectiveness of the structures and processes of a pharmacy system. (3-21-12)

~~16~~**8. CPE.** Continuing pharmacy education. (3-21-12)

~~17~~**9. CPEU.** Continuing pharmacy education unit. (3-21-12)

~~18~~**20. DEA.** United States Drug Enforcement Administration. (3-21-12)

~~19~~**21. Distributor.** A supplier of drugs manufactured, produced, or prepared by others to persons other than the ultimate consumer. (3-21-12)

~~20~~**2. DME.** Durable medical equipment. (3-21-12)

~~21~~**3. Drug Order.** A prescription drug order issued in the unique form and manner permitted for a patient or resident of an institutional facility or as permitted for other purposes by these rules. Unless specifically differentiated, rules applicable to a prescription drug order are also applicable to a drug order. (3-21-12)

~~22~~**4. Drug Product Selection.** The act of selecting either a brand name drug product or its therapeutically equivalent generic. (3-21-12)

~~235.~~ **Drug Product Substitution.** Dispensing a drug product other than prescribed without the express permission of the prescriber and patient. (3-21-12)

~~246.~~ **DTM -- Drug Therapy Management.** Selecting, initiating, or modifying drug treatment pursuant to a collaborative practice agreement. (3-21-12)

~~257.~~ **Emergency Drugs.** Drugs required to meet the immediate therapeutic needs of one (1) or more patients that are not available from any other authorized source in sufficient time to avoid risk of harm due to the delay that would result from obtaining the drugs from another source. (3-21-12)

~~268.~~ **Executive Director.** The Idaho State Board of Pharmacy executive director created by Sections 54-1713 and 54-1714, Idaho Code. (3-21-12)

~~279.~~ **FDA.** United States Food and Drug Administration. (3-21-12)

~~2830.~~ **Flavoring Agent.** An additive used in food or drugs when the additive is used in accordance with the principles of good pharmacy practices and in the minimum quantity required to produce its intended effect. (3-21-12)

~~2931.~~ **Floor Stock.** Drugs or devices not labeled for a specific patient that are maintained at a nursing station or other department of an institutional facility, excluding the pharmacy, for the purpose of administering to patients of the facility. (3-21-12)

~~302.~~ **HIPAA.** Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191). (3-21-12)

~~313.~~ **Hospital System.** A hospital or hospitals and at least one (1) on-site institutional pharmacy under common ownership. A hospital system may also include one (1) or more COE pharmacies under common ownership. (3-21-12)

~~324.~~ **Idaho State Board of Pharmacy or Idaho Board of Pharmacy.** The terms Idaho State Board of Pharmacy, Idaho Board of Pharmacy, State Board of Pharmacy, and Board of Pharmacy are deemed synonymous and are used interchangeably to describe the entity created under the authority of Title 54, Chapter 17, Idaho Code. Unless specifically differentiated, “the Board” or “Board” also means the Idaho State Board of Pharmacy. (3-21-12)

~~335.~~ **Individually Identifiable Health Information.** Information that is a subset of health information, including demographic information, collected from an individual and that:

a. Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (3-21-12)

b. Relates to the past, present, or future physical or mental health or condition of an individual; or the past, present, or future payment for the provision of health care to an individual that: (3-21-12)

i. Identifies the individual; or (3-21-12)

ii. With respect to which there is a reasonable basis to believe the information can be used to identify the individual. (3-21-12)

~~34.~~ ***Institution Engaged in The Practice of Telepharmacy Across State Lines.*** *An institutional facility engaged in the practice of telepharmacy into Idaho that is an out-of-state hospital with an institutional pharmacy licensed or registered in another state or a COE pharmacy licensed or registered in another state that is part of a hospital system.* (3-21-12)

~~356.~~ **Institutional Pharmacy.** A pharmacy located in an institutional facility. (3-21-12)

**011. DEFINITIONS AND ABBREVIATIONS (J -- R).**

**01. LTCF -- Long-Term Care Facility.** An institutional facility that provides extended health care to resident patients. (3-21-12)

**02. Mail Service Pharmacy.** A nonresident pharmacy that ships, mails, or delivers by any lawful means a dispensed legend drug to residents in this state pursuant to a legally issued prescription drug order and ensures the provision of corresponding related pharmaceutical care services required by law. ( )

**023. MPJE.** Multistate Pharmacy Jurisprudence Exam. (3-21-12)

**034. MTM -- Medication Therapy Management.** A distinct service or group of services that optimize therapeutic outcomes for individual patients. MTM services are independent of, but can occur in conjunction with, the provision or administration of a drug or a device and encompass a broad range of activities and responsibilities. The MTM service model in pharmacy practice includes the following five core elements: (3-21-12)

- a. Medication therapy review; (3-21-12)
- b. Personal medication record; (3-21-12)
- c. Medication-related action plan; (3-21-12)
- d. Intervention or referral, or both; (3-21-12)
- e. Documentation and follow-up. (3-21-12)

**045. NABP.** National Association of Boards of Pharmacy. (3-21-12)

**056. NAPLEX.** North American Pharmacists Licensure Examination. (3-21-12)

**067. NDC.** National Drug Code. (3-21-12)

**078. Non-Institutional Pharmacy.** A pharmacy located in a drug outlet that is not an institutional facility. (3-21-12)

**089. Parenteral Admixture.** The preparation and labeling of sterile products intended for administration by injection. (3-21-12)

**0910. Pharmaceutical Care Services.** A broad range of pharmacist-provided cognitive services, activities and responsibilities intended to optimize drug-related therapeutic outcomes for patients. Pharmaceutical care services may be performed independent of, or concurrently with, the dispensing or administration of a drug or device and encompasses services provided by way of DTM under a collaborative practice agreement, pharmacotherapy, clinical pharmacy practice, pharmacist independent practice, and MTM. Nothing in these rules allows a pharmacist, beyond what is statutorily allowed or allowed by a collaborative practice agreement, to diagnose, prescribe, order lab tests, or conduct complete physical exams. Pharmaceutical care services are not limited to, but may include one (1) or more of the following, according to the individual needs of the patient: (3-21-12)

- a. Performing or obtaining necessary assessments of the patient's health status, including the performance of health screening activities that may include, but are not limited to, obtaining finger-stick blood samples; (3-21-12)
- b. Reviewing, analyzing, evaluating, formulating or providing a drug utilization plan; (3-21-12)
- c. Monitoring and evaluating the patient's response to drug therapy, including safety and effectiveness; (3-21-12)
- d. Performing a comprehensive drug review to identify, resolve, and prevent drug-related problems,

- including adverse drug events; (3-21-12)
- e.** Documenting the care delivered; (3-21-12)
  - f.** Communicating essential information or referring the patient when necessary or appropriate; (3-21-12)
  - g.** Providing counseling education, information, support services, and resources applicable to a drug, disease state, or a related condition or designed to enhance patient compliance with therapeutic regimens; (3-21-12)
  - h.** Conducting a drug therapy review consultation with the patient or caregiver; (3-21-12)
  - i.** Preparing or providing information as part of a personal health record; (3-21-12)
  - j.** Identifying processes to improve continuity of care and patient outcomes; (3-21-12)
  - k.** Providing consultative drug-related intervention and referral services; (3-21-12)
  - l.** Coordinating and integrating pharmaceutical care services within the broader health care management services being provided to the patient; and (3-21-12)
  - m.** Other services as allowed by law. (3-21-12)
- 101. Pharmacist Extern.** A person enrolled in an accredited school or college of pharmacy who is pursuing a professional degree in pharmacy and is obtaining practical experience under the supervision of a pharmacist. (3-21-12)
- 112. Pharmacist Intern.** A person who has successfully completed a course of study at an accredited school or college of pharmacy, has received a professional degree in pharmacy, and is obtaining practical experience under the supervision of a pharmacist. (3-21-12)
- 123. Pharmacy Operations.** Activities related to and including the preparation, compounding, distributing, or dispensing of drugs or devices from a pharmacy. (3-21-12)
- 134. PHI -- Protected Health Information.** Individually identifiable health information that is: (3-21-12)
- a.** Transmitted by electronic media (as defined by the HIPAA Privacy Rule at 45 CFR 160.103); (3-21-12)
  - b.** Maintained in electronic media; and (3-21-12)
  - c.** Transmitted or maintained in any other form or medium. (3-21-12)
  - d.** PHI excludes individually identifiable health information in:
    - i.** Education records covered by the Family Education Right and Privacy Act, as amended (20 U.S.C. Section 1232g); (3-21-12)
    - ii.** Records described at 20 U.S.C. Section 1232g(a)(4)(B)(iv); and (3-21-12)
    - iii.** Employment records held by a covered entity (as defined by the HIPAA Privacy Rule at 45 CFR 160.103) in its role as an employer. (3-21-12)
- 145. PIC.** Pharmacist-in-charge. (3-21-12)
- 156. PMP.** Prescription Monitoring Program. (3-21-12)

**167. Prepackaging.** The act of transferring a drug, manually or using an automated system, from a manufacturer's original container to another container prior to receiving a prescription drug order. (3-21-12)

**178. Prescriber.** An individual currently licensed, registered, or otherwise authorized to prescribe and administer drugs in the course of professional practice. (3-21-12)

**189. Prescriber Drug Outlet.** A drug outlet in which prescription drugs or devices are dispensed directly to patients under the supervision of a prescriber, except where delivery is accomplished only through on-site administration or the provision of drug samples. (3-21-12)

**192. Readily Retrievable.** Records are considered readily retrievable if they are able to be completely and legibly produced upon request within seventy-two (72) hours. (3-21-12)

**201. Relative Contraindication.** A condition that renders a particular treatment or procedure inadvisable, but not prohibitive. (3-21-12)

**212. Remote Dispensing Site.** A licensed pharmacy staffed by one or more certified technicians at which telepharmacy services are provided through a supervising pharmacy. (3-21-12)

**223. Retail Non-Pharmacy Drug Outlet.** A retail outlet that sells non-prescription drugs or devices that is not a pharmacy. (3-21-12)

**234. Retail Pharmacy.** A community or other pharmacy that sells prescription drugs at retail and is open to the public for business. (3-21-12)

**245. R.N.** Registered nurse. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**021. FEE SCHEDULE.**

**01. Licenses -- Professionals.** (3-21-12)

**a.** Original pharmacist license: one hundred dollars (\$100). (3-21-12)

**b.** Licensure by reciprocity: two hundred fifty dollars (\$250). (3-21-12)

**c.** Pharmacist license annual renewal. (3-21-12)

**i.** Active: ninety dollars (\$90). (3-21-12)

**ii.** Inactive: fifty dollars (\$50). (3-21-12)

**d.** Late payment processing: fifty dollars (\$50). (3-21-12)

**e.** License reinstatement fee: seventy-five dollars (\$75). (3-21-12)

**02. Certificates of Registration -- Professionals.** (3-21-12)

**a.** Pharmacist ~~engaged in telepharmacy across state lines~~ registration or annual renewal: two hundred fifty dollars (\$250). (~~3-21-12~~)( )

**b.** Pharmacist intern - registration or annual renewal: fifty dollars (\$50). (3-21-12)

- c. Pharmacist extern registration and annual renewal: fifty dollars (\$50) due upon enrollment in an accredited school or college of pharmacy and renewed annually at no charge. (3-21-12)
- d. Technician - registration or annual renewal: thirty-five dollars (\$35). (3-21-12)
- e. Veterinary drug technician - registration or annual renewal: thirty-five dollars (\$35). (3-21-12)
- f. Registration reinstatement: one-half (1/2) the amount of the annual fee. (3-21-12)
- 03. Certificates of Registration and Licensure - Facilities. (3-21-12)**
  - a. Retail pharmacy - registration or annual renewal: one hundred dollars (\$100). (3-21-12)
  - b. Institutional facility - registration or annual renewal. (3-21-12)
    - i. Hospital pharmacy: one hundred dollars (\$100). (3-21-12)
    - ii. Nursing home: thirty-five dollars (\$35). (3-21-12)
    - iii. Hospital without a pharmacy: thirty-five dollars (\$35). (3-21-12)
  - c. Manufacturer (including a repackager that is a manufacturer's authorized distributor of record) - registration or annual renewal: one hundred dollars (\$100). (3-21-12)
  - d. Wholesaler. (3-21-12)
    - i. License or annual renewal: one hundred thirty dollars (\$130); or (3-21-12)
    - ii. Registration or annual renewal: one hundred dollars (\$100). (3-21-12)
  - e. Veterinary drug outlet - registration or annual renewal: one hundred dollars (\$100). (3-21-12)
  - f. ~~Telepharmacy across state lines - registration or annual renewal: one hundred dollars (\$100)~~  
Nonresident central drug outlet. (3-21-12)( )
  - i. Initial license: five hundred dollars (\$500). ( )
  - ii. License annual renewal: two hundred fifty dollars (\$250). ( )
  - g. Mail service pharmacy. (3-21-12)
    - i. Initial license: five hundred dollars (\$500). (3-21-12)
    - ii. License annual renewal: two hundred fifty dollars (\$250). (3-21-12)
  - h. Limited service outlet - registration or annual renewal. (3-21-12)
    - i. Limited service outlet, if not listed: one hundred dollars (\$100). (3-21-12)
    - ii. Parenteral admixture pharmacy: one hundred dollars (\$100). (3-21-12)
    - iii. Remote dispensing pharmacy: one hundred dollars (\$100). (3-21-12)
    - iv. Facility operating a narcotic treatment program: one hundred dollars (\$100). (3-21-12)
    - v. Durable medical equipment outlet: fifty dollars (\$50). (3-21-12)



- vi. Prescriber drug outlet: thirty five dollars (\$35). (3-21-12)
  - i. Analytical or research lab -- registration or annual renewal: forty dollars (\$40). (3-21-12)
  - j. Retail non-pharmacy outlets - registration or annual renewal. (3-21-12)
  - i. "A" (Stocks more than fifty (50) drug items): sixty dollars (\$60). (3-21-12)
  - ii. "B" (Stocks fifty (50) or fewer drug items): twenty-five dollars (\$25). (3-21-12)
  - iii. "V" (Vending machines): ten dollars (\$10) per machine. (3-21-12)
  - k. Supplemental facility registrations or annual renewals. (3-21-12)
  - i. Laminar flow or other hood, biological safety cabinet, or barrier isolator -- single registration required for one (1) or more hoods: no charge. (3-21-12)
  - ii. ADS system -- single registration required for one (1) or more systems: no charge. (3-21-12)
  - l. Reinstatement: one-half (1/2) the amount of the annual fee. (3-21-12)
  - 04. Controlled Substance Registration.** (3-21-12)
  - a. Controlled substance - registration or annual renewal: sixty dollars (\$60). (3-21-12)
  - b. Wholesaler or distributor controlled substance - registration or annual renewal: one hundred dollars (\$100). (3-21-12)
  - c. Controlled substance registration reinstatement: seventy-five dollars (\$75). (3-21-12)
  - 05. Administrative Services and Publications.** (3-21-12)
  - a. Experiential hours certification: twenty-five dollars (\$25). (3-21-12)
  - b. Duplicate pharmacist certificate of licensure: thirty-five dollars (\$35). (3-21-12)
  - c. Duplicate registration or license card: ten dollars (\$10). (3-21-12)
  - d. Commercial lists. (3-21-12)
  - i. Pharmacy list: fifty dollars (\$50). (3-21-12)
  - ii. Pharmacist list: fifty dollars (\$50). (3-21-12)
  - iii. Controlled Substances Act ("CSA") registrant list: one hundred fifty dollars (\$150). (3-21-12)
  - e. Official Idaho Register: fifteen dollars (\$15). (3-21-12)
  - f. Idaho Pharmacy Laws and Rules book: thirty-five dollars (\$35). (3-21-12)
  - g. Hearing transcript: five dollars (\$5) per page. (3-21-12)
- 022. -- 0248. (RESERVED)**

**029. PHARMACIST LICENSE OR REGISTRATION.**

**01. Practice in Idaho.** All pharmacists practicing pharmacy in the state of Idaho must be licensed according to the Board's laws and rules. ( )

**02. Practice Into Idaho.** All pharmacists practicing pharmacy into the state of Idaho must be licensed or registered as follows: ( )

**a.** The following pharmacists must be licensed to provide centralized pharmacy services into Idaho: ( )

**i.** Pharmacists engaged in the independent practice of pharmacy across state lines as defined by the Pharmacist Independent Practice Rule. ( )

**ii.** Pharmacists practicing from a central drug outlet that is not a pharmacy. ( )

**b.** The following pharmacists not licensed in Idaho must be registered to provide centralized pharmacy services into Idaho. ( )

**i.** The PIC of a nonresident central drug outlet or mail service pharmacy. ( )

**ii.** Pharmacists practicing from a pharmacy or its COE. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**035. PHARMACIST REGISTRATION ~~FOR TELEPHARMACY ACROSS STATE LINES~~ TO PRACTICE PHARMACY INTO IDAHO.**

~~A pharmacist not licensed~~ To be registered to practice pharmacy into ~~the state of~~ Idaho an applicant must ~~satisfy the requirements of Section 54-1723A, Idaho Code, and be registered~~ submit an application in the manner and form prescribed by the Board including, but not limited to: ~~lawfully engage in the practice of telepharmacy across state lines into the state of Idaho.~~ (3-21-12)( )

**01. Individual License Information.** Current pharmacist licensure information in all other states, including each state of licensure and each license number; ( )

**02. Facility License Information.** The license or registration number of the facility from which the applicant will be practicing; and ( )

**03. Attestation.** An executed sworn statement attesting that the applicant will abide by the pharmacy laws and rules of the state of Idaho. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**060. DRUG OUTLET LICENSURE AND REGISTRATION.**

A license or a certificate of registration, as applicable, is required for drug outlets doing business in or into Idaho. A license or certificate of registration will be issued by the Board to drug outlets pursuant to, and in the general classifications defined by, Section 54-1729, Idaho Code. (3-21-12)

**01. New Drug Outlet Inspections.** Prior to approving the issuance of a new license or registration, each drug outlet may be inspected to confirm that the facility is appropriately equipped and has implemented proper procedures and minimum standards necessary for compliance with applicable law. Prescription drugs may not be delivered to a new drug outlet location and the drug outlet may not open for business prior to satisfactory completion of the opening inspection, if required. (3-21-12)

**02. Licenses and Registrations Nontransferable.** Drug outlet licenses and registrations are location specific and are nontransferable as to person or place. If the ownership or location of an outlet changes, any registration or license issued to it by the Board is void. (3-21-12)

**03. Reciprocity Nonresident Drug Outlet.** The Board may license by reciprocity or register a drug outlet licensed or registered under the laws of another state if the other state's licensing standards are comparable to those in Idaho and acceptable to the Board, evidenced by an inspection report, ~~and if the other state extends reciprocal licensure to Idaho drug outlets.~~ (3-21-12)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**071. ~~TELEPHARMACY AND~~ REMOTE DISPENSING SITE REGISTRATION.**

~~**01. Telepharmacy Practice Registration.** Each location where drugs are dispensed through the practice of telepharmacy must be registered with the Board. (3-21-12)~~

**021. Remote Dispensing Site Registration.** A limited service outlet registration must be obtained by a remote dispensing site prior to participating in the practice of telepharmacy. (3-21-12)

~~**032. Supplemental Registration Application Requirements.** Prior to construction, an applicant for registration of a remote dispensing site must submit and obtain Board approval of a registration application. The application must include:~~

- a. An attached description of the telepharmacy communication, electronic recordkeeping, and ADS systems; (3-21-12)
- b. The operating specifications; and (3-21-12)
- c. An accurate scale drawing of the facility that illustrates: (3-21-12)
  - i. The layout and location of the systems; (3-21-12)
  - ii. The location of a patient counseling area; and (3-21-12)
  - iii. All access points to the electronic recordkeeping system and the ADS system. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**073. NONRESIDENT CENTRAL DRUG OUTLET AND MAIL SERVICE PHARMACY REGISTRATION.**

A nonresident central drug outlet or mail service pharmacy must be registered with the Board in order for its employee or contract pharmacist to practice pharmacy into Idaho. An applicant must submit an application in the manner and form prescribed by the Board, including, but not limited to: (    )

**01. Executive Summary.** An executive summary describing the centralized pharmacy services to be performed; (    )

**02. PIC or Director.** Identity of a pharmacist licensed to practice pharmacy in the state of domicile, who shall be the pharmacist in charge or director of the nonresident drug outlet. (    )

**0734. -- 079. (RESERVED)**

**(BREAK IN CONTINUITY OF SECTIONS)**

**090. MANUFACTURER REGISTRATION.**

A manufacturer located in Idaho must be inspected and registered by the Board prior to engaging in drug manufacturing. Non-resident manufacturers that ship, mail, or deliver dispensed prescription drugs or devices to an Idaho resident must be registered by the Board as an ~~an out-of-state~~ mail service pharmacy ~~pursuant to 54-1743, Idaho Code.~~ (3-21-12)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**320. PHARMACIST: INDEPENDENT PRACTICE.**

An Idaho-licensed pharmacist may provide pharmaceutical care services and MTM outside of a ~~pharmacy drug outlet~~ or institutional facility, including across state lines, if ~~not subject to centralized pharmacy service rules and~~ the following conditions are met: (3-21-12)( )

**01. Access to Relevant Information.** The pharmacist has access to prescription drug order records, patient profiles, or other relevant medical information and appropriately reviews the information; (3-21-12)

**02. Information Protected from Unauthorized Use.** Access to the information required by these rules is protected from unauthorized access and use; and (3-21-12)

**03. Records Maintained in Electronic Recordkeeping System.** The pharmacist maintains the records or other patient-specific information created, collected, or used in an electronic recordkeeping system that complies with the requirements of these rules. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**600. ~~PHARMACY REGISTRANT AND~~ PIC OR DIRECTOR.**

**01. Designated PIC or Director Required.** A pharmacy ~~or central drug outlet~~ must not be without a designated PIC or director for more than thirty (30) sequential days. (3-21-12)( )

**02. Corresponding and Individual Responsibility.** The pharmacy ~~registrant~~ ~~or central drug outlet~~ and the PIC or director each have corresponding and individual responsibility for compliance with the law and these rules in all aspects of the sale and the dispensing of drugs, devices, and other materials at the drug outlet, including the safe, accurate, secure, and confidential handling and storage and the preparation, compounding, distributing, or dispensing of drugs and PHI. (3-21-12)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**610. CENTRALIZED PHARMACY SERVICES.**

A pharmacy may centralize pharmacy services if: ( )

**01. Written Contract.** The originating pharmacy has a written contract with the central drug outlet or central pharmacist outlining the services to be provided and the responsibilities and accountabilities of each party in fulfilling the terms of the contract or the two (2) are jointly owned; ( )

02. **Training.** The central drug outlet or central pharmacist provides a training and orientation program that ensures the pharmacists who are providing centralized drug outlet services are competent to perform such services; ( )

03. **Communication.** Appropriate communications exist to allow the central drug outlet or central pharmacist to readily communicate with prescribers, the institutional facility, or the originating pharmacy; ( )

04. **Secure Common Electronic File.** The parties share a secure common electronic file or utilize other secure technology that allows access by the central drug outlet or central pharmacist to information required to perform centralized pharmacy services; ( )

05. **Continuous Quality Improvement Program.** The parties implement and maintain a quality improvement program designated to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems; ( )

06. **Audit Trail Documentation.** The central drug outlet or central pharmacist maintains an electronic recordkeeping system that must have audit trail functionality that documents for each prescription drug order the identity and location of each individual involved in each step of the centralized pharmacy services; ( )

07. **Privacy.** The parties demonstrate adequate security to protect the privacy of PHI; ( )

08. **Policies and Procedures.** The parties adopt policies and procedures that are sufficiently detailed to ensure compliance with pertinent federal and Idaho law and protect public health, safety and welfare. ( )

09. **Location.** Centralized pharmacy services must be performed from a secure area that is restricted to authorized personnel and that provides adequate protection of PHI. ( )

10. **Exemption.** A single prescription drug order may be shared by an originating pharmacy and a central drug outlet or central pharmacist. The filling, processing and delivery of a prescription drug order by one pharmacy for another pursuant to this section shall not be construed as the filling of a transferred prescription or as a wholesale distribution. ( )

**6101. -- 619. (RESERVED)**

**(BREAK IN CONTINUITY OF SECTIONS)**

**641. INSTITUTIONAL FACILITY: OFFSITE SERVICES -- FIRST DOSE PHARMACY.**

A contracted offsite pharmacy that provides prescription processing or filling services for an institutional facility without an institutional pharmacy or for patients of a home health or hospice agency may centralize these services to another pharmacy if in compliance ~~with these rules.~~ as follows: (3-21-12)( )

01. **Limited Purpose.** Centralized pharmacy services are for the limited purpose of ensuring that drugs or devices are attainable to meet the immediate needs of patients and residents or if the originating pharmacy cannot provide services for the institutional facility on an ongoing basis; ( )

02. **Institutional Facility Approval.** The originating pharmacy obtains approval from the institutional facility, home health agency or hospice agency to centralize pharmacy services for its patients and residents; ( )

03. **Written Contract.** The originating pharmacy has a written contract with the central pharmacy outlining the services to be provided and the responsibilities and accountabilities of each party in fulfilling the terms of the contract; and ( )

04. **Drug or Chart Orders.** The originating pharmacy provides a valid verbal, electronic, or paper

~~drug order to the contracted central pharmacy. A single drug order may be shared by an originating pharmacy and a central pharmacy with no transfer required.~~ ( )

642. -- 649. (RESERVED)

**650. INSTITUTIONAL FACILITY: CENTRALIZED PHARMACY SERVICES.**

~~In addition to the rules for centralized pharmacy services, An institutional facility that centralizes pharmacy may centralize prescription drug order processing or filling services if services must be in compliance with the following rules:~~ (3-21-12)( )

~~01. Limited Purpose. The centralizing of prescription drug order processing or filling Centralized pharmacy services is are for the limited purpose of ensuring that drugs or devices are attainable to meet the immediate needs of patients and residents of the institutional facility or if the originating pharmacy cannot provide services for the institutional facility on an ongoing basis;~~ (3-21-12)( )

~~02. Institutional Facility Approval. The originating pharmacy obtains approval from the institutional facility to centralize prescription drug order processing or filling services for its patients and residents;~~ (3-21-12)

~~03. Written Contract. The originating pharmacy has a written contract with the central pharmacy outlining the services to be provided and the responsibilities and accountabilities of each party in fulfilling the terms of the contract; and~~ (3-21-12)

~~04. Drug or Chart Orders. The originating pharmacy provides a valid verbal, electronic, or paper drug order to the contracted central pharmacy. A single drug order may be shared by an originating pharmacy and a central pharmacy with no transfer required.~~ (3-21-12)

**651. INSTITUTIONAL FACILITY: PRACTICE OF TELEPHARMACY.**

~~01. Contracted Telepharmacy Services. An institutional pharmacy may centralize pharmacy services through the practice of telepharmacy if:~~ (3-21-12)

~~a. The central pharmacy provides a training and orientation program that ensures that pharmacists who are providing telepharmacy services are competent to review and approve drug orders;~~ (3-21-12)

~~b. Appropriate video, telecommunications, or other systems allow the pharmacist within the central pharmacy to readily communicate with the prescribers within the institutional facility;~~ (3-21-12)

~~c. The parties share a common electronic file or utilize other technology that allows access by the central pharmacy to information required to fill or refill a prescription drug order; and~~ (3-21-12)

~~d. The parties implement and maintain a continuous quality improvement program for telepharmacy services designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems.~~ (3-21-12)

**02. Policies and Procedures.** An institutional pharmacy and its contracted central pharmacy drug outlet or central pharmacist that provides telepharmacy centralized pharmacy services must adopt policies and procedures and retain documentation that evidences at least the following: (3-21-12)( )

~~a. A copy of the approval required by these rules;~~ (3-21-12)

~~b.a. A copy of the contract if required by these rules;~~ (3-21-12)( )

~~b.b. Identification of the directors of the central pharmacy and of the institutional pharmacy or PICs;~~ (3-21-12)( )

~~d. The maintenance of appropriate records to identify the pharmacists providing centralized prescription drug order processing or filling services;~~ (3-21-12)

~~ec.~~ The protocol for ensuring that the central ~~pharmacy drug outlet~~ maintains sufficient Board licensed or registered pharmacists to meet the centralized pharmacy services needs of the institutional facility; ~~(3-21-12)( )~~

~~f.~~ ~~The maintenance of a mechanism for tracking the prescription drug order during each step in the dispensing process;~~ ~~(3-21-12)~~

~~g.~~ ~~The documentation and protocols demonstrating adequate security to protect the privacy of PHI;~~ ~~(3-21-12)~~

~~hd.~~ The protocol for accessing prescription drugs in the institutional pharmacy contracting with the central ~~pharmacy drug outlet or central pharmacist~~ and for maintaining the security of the drugs; ~~(3-21-12)( )~~

~~ie.~~ Essential information utilized by the institutional facility, such as its ~~therapeutic interchange list, formulary, standard drip concentrations, standard medication administration times, standardized or protocol orders, pharmacokinetic dosing policies, and renal dosing policies, as well as protocols for ensuring timely and complete communication of changes to the information;~~ and ~~(3-21-12)( )~~

~~jf.~~ The protocol for the central ~~pharmacy drug outlet or central pharmacist~~ to perform a review of the patient's profile, including but not limited to performing a prospective drug review. ~~(3-21-12)( )~~

~~652~~1. -- 669. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

~~680. TELEPHARMACY ACROSS STATE LINES.~~

~~The practice of telepharmacy across state lines is permitted only for institutions engaged in the practice of telepharmacy across state lines, as defined, and their pharmacists if both are registered or licensed as required by the Board.~~ ~~(3-21-12)~~

~~68~~0. -- 699. (RESERVED)

# IDAPA 27 - BOARD OF PHARMACY

## 27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-1206

### NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is August 22, 2012.

**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 Sections 37-2702 and 37-2715, Idaho Code.

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

The substances listed within this temporary rule pass the Schedule I test found in Section 37-2704, Idaho Code, and are being abused in Idaho. This temporary rule would render the substances found within it Schedule I substances.

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

The substances listed within this temporary rule are being abused in Idaho and their inclusion into the list of Schedule I controlled substances is necessary to protect the public health, safety, and welfare.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Mark Johnston, R.Ph., Executive Director, at (208) 334-2356.

DATED this 4th day of September, 2012.

Mark Johnston, R.Ph., Executive Director  
Board of Pharmacy  
3380 Americana Terrace, Ste. 320  
P. O. Box 83720  
Boise, ID 83720-0067  
Phone: (208) 334-2356  
Fax: (208) 334-3536

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#### THE FOLLOWING IS THE TEMPORARY TEXT OF DOCKET NO. 27-0101-1206

**210. CONTROLLED SUBSTANCES: SCHEDULE I.**

Unless specifically excepted or unless listed in another schedule, the following substances, their derivatives, salts, isomers, and salts of isomers with similar chemical structure shall be listed in Schedule I, under Article II, Title 37, Chapter 27, Idaho Code. (8-22-12)T

**01. Tetrahydrocannabinols.** Tetrahydrocannabinols or synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structures; and (8-22-12)T

**02. Structural Compounds.** Any compound structurally derived from 3-(1-cycloalkyl, cycloalkenyl,



aryl-oyl)indole or 1H-indol-3-yl-(1-cycloalkyl, cycloalkenyl, aryl)methane by substitution at the nitrogen atom of the indole ring to any extent, whether or not further substituted in the indole ring to any extent, whether or not substituted to any extent in or on the cycloalkyl, cycloalkenyl, aryl ring(s) (Substitution in the ring may include, but are not limited to heteroatoms such as nitrogen, sulfur, and oxygen). (8-22-12)T

~~2101~~. -- 219. (RESERVED)

**IDAPA 28 - IDAHO DEPARTMENT OF COMMERCE**  
**28.02.05 - RURAL COMMUNITY BLOCK GRANT PROGRAM (RCBG)**  
**DOCKET NO. 28-0205-1201**  
**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is October 24, 2012.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 67-4702, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

This rule change will increase the population of eligible cities from 10,000 to 25,000. Rural cities with a population between 10,000 to 25,000 are experiencing private sector job growth opportunities, but lack the financial ability or economies of scale to help fund public infrastructure needs for private business expansion. The current rules are 10 years old so increasing the limit is essentially keeping up with population growth or right sizing the Rural Community Block Grant program. A change would not necessarily add new cities from the original creation of the program.

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

The temporary rulemaking will confer a benefit on affected cities.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 Idaho Department of Commerce does not anticipate a fiscal impact resulting from this rule change.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because it was unlikely to get a consensus from over 180 cities (interested parties) to agree on a definition of a "rural city."

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Dennis Porter, Community Development Manager, (208) 334-2650 ext. 2145.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 17, 2012.

DATED this September 5, 2012

Jeffery Sayer, Director  
Idaho Department of Commerce  
700 West State Street  
PO Box 83720  
Boise, ID 83720-0093  
Tel: (208)-334-2470  
Fax: (208)-334-2631

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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 28-0205-1201**

**011. ELIGIBLE APPLICANTS.**

Applicants for the Idaho Rural Community Block Grants are as follows: (3-15-02)

**01. City Applicants.** Rural cities are those generally less than ~~ten~~ twenty-five thousand (~~10~~25,000) in population. Cities contiguous to large cities are not eligible to apply. (~~3-15-02~~)(10-24-12)T

**02. County Applicants.** Counties may apply for county wide projects or on behalf of unincorporated communities. Counties cannot apply for projects that benefit larger cities. (3-15-02)

**03. Special Purpose Districts.** Special purpose districts are not eligible, although they may be involved in the execution of a project by mutual agreement. (3-15-02)

**04. Indian Tribes.** Indian tribes may be considered as an applicant or may be a partner in a project by mutual agreement. (3-15-02)

## IDAPA 28 - DEPARTMENT OF COMMERCE

### 28.02.06 - IDAHO SMALL BUSINESS FEDERAL FUNDING ASSISTANCE ACT RULES

#### DOCKET NO. 28-0206-1201 (NEW CHAPTER)

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

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Title 67, Chapter 52, Idaho Code, and the Idaho Small Business Federal Funding Assistance Act, Sections 67- 4702(2) and 67-4723A, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the June 6, 2012 Idaho Administrative Bulletin, [Vol. 12-6, pages 28 through 34](#).

**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 program is an annual appropriation of \$50,000 from the general fund. The impact to the Department would be minimal. The entire \$50,000 will be used to offset business proposals development costs through individual awards not to exceed \$4,000. No additional fund or capital items are necessary.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Gloria Mabbutt at (208) 334-2650, extension 2139.

DATED this 9th day of August, 2012.

Jeffery Sayer, Director  
Idaho Department of Commerce  
700 West State Street  
P.O. Box 83720  
Boise, ID 83720-0093  
Phone: (208) 334-2650 ext.2114  
Fax: (208) 334-2631

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#### DOCKET NO. 28-0206-1201 - ADOPTION OF PENDING RULE

No substantive changes have been made to the pending rule.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 12-6, June 6, 2012, pages 28 through 34](#).

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2013 Idaho State Legislature for final adoption.

## IDAPA 35 - IDAHO STATE TAX COMMISSION

### 35.01.01 - INCOME TAX ADMINISTRATIVE RULES

#### DOCKET NO. 35-0101-1201

#### 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 63-105 and 63-3039, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

Rules 600 and 700, as stated in the Notice Of Intent To Promulgate Rules - Negotiated Rulemaking and published in the June 6, 2012, Administrative Bulletin, are not being promulgated due to time restraints and will remain as codified.

Rule 130 is being amended consistent with House Bill 364 to clarify the treatment of pensions received by certain retired police officers and firefighters. The definition of disability is changed to a more clear definition as found in Idaho Code section 49-117(7)(b)(iv).

Rule 140 is being amended consistent with House Bill 485 to revise the eligibility criteria for taking a state income tax deduction for installing energy efficiency upgrade measures within existing residences.

Rule 171 is being changed to clarify what constitutes non-qualifying property for the Idaho capital gains deduction.

Rules 290, 291 & 877 are being amended consistent with House Bill 582 to revise the options of pass-through entities. The pass-through entity may file a composite return for non-residents and pay the tax due or the entity can do backup withholding under Idaho Code section 63-3036B.

Rule 714 is being changed to clarify the current practice of applying Idaho investment tax credit limitations first to mobile property and then to used property.

**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:

Rule 140 may have a reduction of revenue of \$925,000 for FY13 increasing to \$1 million by FY15.

**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 6, 2012, Idaho Administrative Bulletin, [Vol. 12-6, page 35](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cynthia Adrian at (208) 334-7670.

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 close of business Wednesday, October 24, 2012.

DATED this 31st day of August 2012.

Cynthia Adrian  
Tax Policy Specialist  
Idaho State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7670

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0101-1201**

**130. DEDUCTION OF CERTAIN RETIREMENT BENEFITS (RULE 130).**

Section 63-3022A, Idaho Code.

(3-20-97)

**01. Qualified Benefits.** Subject to limitations, the following benefits qualify for the deduction:

(3-20-97)

**a.** Retirement annuities paid to a retired civil service employee. For purposes of this deduction a retired civil service employee is an individual who is receiving retirement annuities paid under the Civil Service Retirement System by the United States Government. An individual is entitled to benefits from this retirement system only if he established eligibility prior to 1984. Retirement annuities paid to a retired federal employee under the Federal Employees Retirement System generally do not qualify for the deduction. Retirement annuities received under the Federal Employees Retirement System by a retiree previously covered under the Civil Service Retirement System qualify to the extent the retiree establishes the portion of the annuity attributable to coverage under the Civil Service Retirement System. (5-8-09)( )

**b.** Retirement benefits paid as a result of participating in the firemen's retirement fund of the state of Idaho as authorized by Title 72, Chapter 14, Idaho Code. A fireman is entitled to benefits from this fund only if he established eligibility as a paid fireman prior to October 1, 1980. Retirement benefits paid by the public employee's retirement system do not qualify for the deduction. (3-20-97)

**c.** Retirement benefits paid *as a result of participating in a policeman's retirement fund of an Idaho city as previously authorized by Sections 50-1501 through 50-1524, Idaho Code. A policeman is entitled to benefits from a city policeman's retirement fund if he was employed by a city as a policeman prior to April 12, 1967, or if he was required to participate in the fund by city ordinance. Retirement benefits paid by the public employee's retirement system do not qualify for the deduction.* to a retired Idaho city police officer: (4-6-05)( )

**i.** By a city or its agent in regard to a policeman's retirement fund that no longer admits new members and on January 1, 2012, was administered by a city in this state; or ( )

**ii.** In regard to a policeman's retirement fund that no longer admits new members and on January 1, 2012, was administered by the public employee retirement system of Idaho; or ( )

**iii.** By the public employee retirement system of Idaho to a retired police officer in regard to Idaho employment not included in the federal social security retirement system; or ( )

**iv.** An unmarried widow or widower of a person described in Subparagraph 130.01.c.i., ii., or iii. of this rule. ( )

d. Retirement benefits paid by the United States Government to a retired member of the military services. (3-20-97)

02. **Unremarried Widow or Widower.** An unremarried widow or widower of a retired civil service employee, retired policeman, retired fireman, or retired member of the military services, who is sixty-five (65) or older, or sixty-two (62) and disabled, is eligible for the deduction, even though the deceased spouse was not eligible at the time of death. In this situation, the amount of the retirement benefits that can be considered for the deduction for the taxable year of the spouse's death is limited to the benefits paid to the spouse as a widow or widower. (4-6-05)(    )

a. Example. In year one (1), the husband of a married couple filing a joint income tax return received civil service retirement. The husband did not qualify for the Idaho retirement deduction that year since he was not disabled and was only age sixty (60) during that year. In year two (2) the husband died. Because his wife is age sixty-three (63) and disabled in that year, she is eligible for the deduction for year two (2) but only for the amount of her husband's retirement benefits she received that year as a result of being the widow. She may not include in the computation of the deduction any amounts her husband was paid or entitled to prior to his death. For year three (3), she may compute the deduction based on all the retirement benefits she receives as the widow that year. (4-6-05)

b. Example. Assume the same facts as stated in Paragraph 130.02.a, of this rule, except that the wife is not disabled and does not reach age sixty-five (65) until year four (4). In year one (1) the husband did not qualify for the Idaho retirement deduction. In year two (2) the husband did not qualify for the deduction and the wife did not qualify after her husband died. In year three (3), the wife did not qualify. In year four (4), because the wife reaches age sixty-five (65) during that year, she is entitled to the Idaho retirement deduction on the amount of her husband's retirement she received that year as a result of being a widow. (4-6-05)

c. Example. Once the widow remarries, she will not be eligible for the Idaho retirement deduction for that year and the years that follow on the amounts she receives from her previous husband's retirement. (4-6-05)

03. **Married Individuals Filing Separate Returns.** Married individuals who elect to file married filing separate are not entitled to the deduction allowed by Section 63-3022A, Idaho Code. (7-1-98)

04. **Publication of Maximum Deduction.** The maximum deduction that may be subtracted when computing Idaho taxable income ~~shall~~ will be published each year in the instructions for preparing Idaho individual income tax returns. (3-20-97)(    )

05. **Disabled Individual.** For purposes of this deduction, an individual is classified as disabled if he meets the requirements of Section 63-701, Idaho Code, or an individual who qualifies as a person with a "permanent disability" under section 49-117 (7) (b) (iv), Idaho Code. This includes: (4-6-05)(    )

a. An individual recognized as disabled by the Social Security Administration pursuant to Title 42, United States Code, or by the Railroad Retirement Board pursuant to Title 45, United States Code, or by the Office of Management and Budget pursuant to Title 5, United States Code; or (4-6-05)

b. A disabled veteran of any war engaged in by the United States, whose disability is recognized as a service-connected disability of a degree of ten percent (10%) or more, or who has a pension for nonservice-connected disabilities, in accordance with laws and regulations administered by the United States Veterans Administration. (4-6-05)

131. -- 139. (RESERVED)

140. **DEDUCTION FOR ~~INSULATION OF RESIDENCES~~ ENERGY EFFICIENCY UPGRADES (RULE 140).** Section 63-3022B, Idaho Code. (3-20-97)

~~01- Additional Insulation. The deduction may be taken for additional insulation installed in a residence, or existing addition to a residence but may not be taken for insulation to replace existing insulation.~~

(3-20-97)

**021. Qualifying Date.** The ~~insulation~~ energy efficiency upgrade must be installed in a residence of the taxpayer, or addition to a residence, that existed on or before January 1, ~~1976~~ 2002. A residence, or addition to a residence, constructed after January 1, ~~1976~~ 2002, does not qualify. (3-20-97)(    )

~~03. Types of Insulation. To qualify for the deduction, the insulation must be commonly used as insulation material in the building industry. In addition to the fiberglass insulation indicated in the statute, other types of insulation material may also qualify for the deduction including:~~ (3-20-97)

~~a. Rockwool;~~ (3-20-97)

~~b. Urethane foam;~~ (3-20-97)

~~c. Polyurethane foam;~~ (3-20-97)

~~d. Styrofoam; and~~ (3-20-97)

~~e. Calcium silicate.~~ (3-20-97)

**02. Energy Efficiency Upgrade Measure Definition.** “Energy efficiency upgrade measure” means an energy efficiency improvement to the building envelope or duct system that meets or exceeds the minimum value for the improved component established by the version of the international energy conservation code (IECC) in effect in Idaho during the taxable year in which the improvement is made or accrued. The IECC in effect in Idaho refers to the version most recently adopted by the Idaho Building Code Board, including amendments made by the Board. See the Board’s administrative rules at IDAPA 07.03.01.004. (    )

**043. Siding.** Siding is not considered ~~insulation~~ an energy efficiency upgrade. If a layer of insulation is placed beneath siding, the cost of the insulation is deductible if it otherwise qualifies. If the siding consists of an outer shell for protection against the weather and an inner layer of insulating material, the insulating material qualifies if the cost is separately identified by the seller. (3-20-97)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**171. IDAHO CAPITAL GAINS DEDUCTION -- QUALIFIED PROPERTY (RULE 171).**

Section 63-3022H, Idaho Code.

(3-20-97)

**01. Tangible Personal Property.** Tangible personal property qualifies for the Idaho capital gains deduction if it was used in Idaho for at least twelve (12) months by a revenue-producing enterprise as defined by Section 63-3022H(4), Idaho Code, and Rule 172 of these rules. (4-7-11)

**02. Real Property.** Idaho real property qualifies for the Idaho capital gains deduction if it was held by the taxpayer for twelve (12) months. Section 63-3022H(5), Idaho Code, defines real property to be land and other tangible property permanently upon or affixed to the land. For purposes of the Idaho capital gains deduction, real property does not include intangible property or severable property rights. ~~Examples of intangible assets or property rights that do not qualify for the Idaho capital gains deduction include:~~ See Subsection 171.05 of this rule for examples of nonqualifying property. (2-27-12)(    )

~~a. Easements and rights of way, including agricultural, forest, historic, or open-space easements;~~ (4-7-11)

~~b. Grazing permits;~~ (4-7-11)

~~c. Leasehold interests;~~ (4-7-11)



- ~~d. Options; (4-7-11)~~
- ~~e. Water, mineral, hunting and fishing, renewable energy, and land surface rights; (4-7-11)~~
- ~~f. Conservation easements; (4-7-11)~~
- ~~g. Scenic easements. (4-7-11)~~

**03. Gain from Forfeited Rights and Payments.** Gain attributable to a cancellation, lapse, expiration, or other termination of a contract right or obligation does not qualify for the Idaho capital gains deduction. This includes any gain from the lapse of an option or from forfeited earnest money, down payment, or similar payments, related to otherwise qualifying property. (4-7-11)

**04. Timber.** As used in Section 63-3022H(3)(e), Idaho Code, qualified timber grown in Idaho includes: (3-20-97)

**a.** Standing timber held as investment property that is a capital asset pursuant to Section 1221, Internal Revenue Code; and (3-20-97)

**b.** Cut timber if the taxpayer elects to treat the cutting of timber as a sale or exchange pursuant to Section 631(a), Internal Revenue Code. (3-20-97)

**05. Nonqualifying Property.** Nonqualifying property includes: ( )

**a.** Real or tangible personal property not having an Idaho situs. ( )

**b.** Tangible personal property not used by a revenue-producing enterprise. ( )

**c.** Intangible property. Some examples of intangible property include, but are not limited to: ( )

**i.** Stocks and bonds; ( )

**ii.** Easements and rights of way, including agricultural, forest, historic, or open-space easements; ( )

**iii.** Grazing permits; ( )

**iv.** Leasehold interests, regardless of term; ( )

**v.** Options; ( )

**vi.** Water, mineral, hunting and fishing, renewable energy, and land surface rights; ( )

**vii.** Conservation easements; ( )

**viii.** Scenic easements; ( )

**ix.** Interests in a partnership, LLC or S corporation. ( )

**056. Holding Periods.** (3-20-97)

**a.** In General. To qualify for the capital gains deduction, property otherwise eligible for the Idaho capital gains deduction must be held for specific time periods. The holding periods for Idaho purposes generally follow Sections 1223 and 735, Internal Revenue Code. (5-8-09)

**b.** Exception to the Tacked-On Holding Period. The holding period of property given up in a tax-free

exchange is not tacked on to the holding period of the property received if the property given up was nonqualifying property based on the requirements of Section 63-3022H(3), Idaho Code. ~~Nonqualifying property includes:~~ (7-1-98)( )

- ~~i. Real or tangible personal property not having an Idaho situs at the time of the exchange; and (7-1-98)~~
- ~~ii. Tangible personal property not used by a revenue producing enterprise. (7-1-98)~~
- ~~iii. Intangible property. (5-8-09)~~

**c.** Installment Sales. The determination of whether the property meets the required holding period is made using the laws applicable for the year of the sale. If the required holding period is not met in the year of sale, the gain is not from qualified property. The classification as nonqualified property will not change even though the gain may be reported in subsequent years when a reduced holding period is applicable. (4-5-00)

**d.** Examples of nonqualifying property. (7-1-98)

i. A taxpayer purchased land in California. After owning the land three (3) years, he gave up the California land in a tax-free exchange for land in Idaho. He owned the Idaho land for ten (10) months until selling it at a gain. For federal purposes the holding period of the California land tacks on to the holding period of the Idaho land. The gain from the sale of the California land would not qualify for the Idaho capital gains deduction since it is real property located outside Idaho. The holding period of the California land does not tack on to the holding period of the Idaho land for purposes of the Idaho capital gains deduction. Because the Idaho land was not held for twelve (12) months, the gain from the sale of the Idaho land does not qualify for the Idaho capital gains deduction. (3-30-07)

ii. Assume the same facts as in the example in Subparagraph 171.05.d.i. except the taxpayer's original purchase was land in Idaho. Because the taxpayer owned real property in Idaho that was exchanged for a second parcel of real property in Idaho, the holding period of the Idaho land given up tacks on to the holding period of the second parcel of Idaho land. Because the holding period of the second property, which includes the holding period of the first property, was at least twelve (12) months, the gain from the sale of the second parcel of real property qualifies for the Idaho capital gains deduction. (4-7-11)

**067. Holding Periods of S Corporation and Partnership Property. (7-1-98)**

**a.** Property Contributed by a Shareholder to an S Corporation or by a Partner to a Partnership. A shareholder or partner who contributes otherwise qualified property to an S corporation or partnership may treat the pass-through gain on the sale of that property as a qualifying Idaho capital gain if the property has, in total, been held by the shareholder or partner and the S corporation or partnership for the required holding period. The noncontributing shareholders or partners may treat the pass-through gain as a qualifying Idaho capital gain only if the S corporation or partnership held the property for the required holding period. (5-8-09)

**b.** Property Distributed by an S Corporation or Partnership. (2-27-12)

i. Liquidating Distributions. For purposes of this rule, the holding period of property received in a distribution from a partnership in liquidation of a partnership interest or from an S corporation in liquidation of stock does not include the time the partnership or S corporation held the property. In such cases, the property is received in exchange for the interest in the entity. Since a partnership interest and stock are not qualified property for purposes of the Idaho capital gains deduction, the entity's holding period does not tack on to the holding period of the property received in liquidation. (2-27-12)

ii. Nonliquidating Distributions. For purposes of this rule, the holding period of property received in a distribution from a partnership other than in liquidation of a partnership interest or from an S corporation other than in liquidation of stock includes the time the entity held the property. (2-27-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**290. TAX PAID BY PASS-THROUGH ENTITIES FOR OFFICERS, DIRECTORS, OWNERS, OR BENEFICIARIES -- ELECTION FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 2011, AND BEFORE JANUARY 1, 2012 (RULE 290).**

Section 63-3022L, Idaho Code. (3-30-07)

**01. Election Provided in Section 63-3022L, Idaho Code.** (3-30-01)

**a.** The election to have a qualifying pass-through entity pay the tax as provided in Section 63-3022L, Idaho Code, is available only to an individual who is an officer, director, owner, or beneficiary. For purposes of this rule, pass-through entity means "pass-through entity" as defined in Section 63-3006C, Idaho Code. (4-7-11)

**b.** The election is not available to: (4-7-11)

i. Corporations; (4-7-11)

ii. Partnerships; (4-7-11)

iii. Electing small business trusts; (4-7-11)

iv. Any other person who is not an individual; (2-27-12)

v. A nonresident individual owner or beneficiary who has Idaho taxable income in addition to income for which the individual has made the election under Section 63-3022L, Idaho Code. If a nonresident individual has no other Idaho taxable income except for income from pass-through entities, the individual may make the election if the election is made for each pass-through entity in which the individual is an owner or beneficiary. (2-27-12)

vi. Idaho resident individuals, or (2-27-12)

vii. An Idaho part-year resident individual who has Idaho taxable income in addition to income from a pass-through entity. If a part-year resident individual has no other Idaho taxable income except for income from pass-through entities, the individual may make the election if the election is made for each pass-through entity in which the individual is an owner or beneficiary. (2-27-12)

**02. Making the Election.** The election for a pass-through entity to report and pay the tax for a qualified nonresident individual must be made by the individual. Permission from the Tax Commission is not required. (4-7-11)

**a.** The election must be made for each taxable year to which it will apply. (4-7-11)

**b.** The election must be made on a form as prescribed by the Tax Commission. The pass-through entity must keep and maintain the election form and make it available to the Tax Commission upon request. (4-7-11)

**c.** The election must be provided to the pass-through entity by January 31 following the end of the taxable year for which it is to apply. (2-27-12)

**d.** Once the election is made, it is irrevocable for that taxable year. (2-27-12)

**03. Failure to Make Election.** If the individual fails to make the election to have the pass-through entity pay the tax, the pass-through entity must remit back-up withholding on the individual's share of the pass-through entity's income, including guaranteed payments, and wages, salary, and other compensation paid by the pass-through entity that is required to be included on the owner's Idaho return as required in Section 63-3036B, Idaho Code, and Rule 877 of these rules. (2-27-12)

**291. TAX PAID BY PASS-THROUGH ENTITIES FOR ~~OFFICERS, DIRECTORS,~~ OWNERS, OR BENEFICIARIES -- COMPUTATION OF IDAHO TAXABLE INCOME FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 201~~1~~2 (RULE 291).**

Sections 63-3022L and 63-3026A, Idaho Code.

(4-7-11)

**01. In General.** A pass-through entity is responsible for reporting and paying the tax for nonresident individuals ~~s officers, directors, owners, or beneficiaries who make the election allowed by Section 63-3022L, Idaho Code or withholding tax on the individual's share of income from the pass-through entity required to be included in Idaho taxable income as prescribed in Section 63-3036B, Idaho Code.~~ For purposes of this rule, pass-through entity means "pass-through entity" as defined in Section 63-3006C, Idaho Code. (4-7-11)(    )

**02. Income Reportable to Idaho.** The following items must be included in the computation of Idaho taxable income for an ~~electing~~ individual: (4-7-11)(    )

**a.** Compensation paid by the pass-through entity to the ~~officer, director,~~ owner, or beneficiary that is income from Idaho sources as determined pursuant to Rules 270 through 272 of these rules. (4-7-11)(    )

**b.** Pass-through items that are income from Idaho sources of an owner as determined pursuant to Rule 263 of these rules. (4-7-11)

**c.** Distributable net income from an estate or trust that is income from Idaho sources as determined pursuant to Rule 261 of these rules. (4-7-11)

**03. Deductions.** Pass-through entities paying the tax under Section 63-3022L, Idaho Code, are not entitled to claim the following deductions on behalf of an individual. (4-7-11)

**a.** Capital Loss. As provided in Section 63-3022(i), Idaho Code, S corporations and partnerships are not allowed to carry over or carry back any capital loss provided for in Section 1212, Internal Revenue Code. (3-30-07)

**b.** Net Operating Loss. As provided in Section 63-3022(i), Idaho Code, S corporations and partnerships are not allowed to carry over or carry back any net operating loss provided for in Section 63-3022(c), Idaho Code. (3-30-07)

**c.** Idaho Capital Gains Deduction. As provided in Section 63-3022H, Idaho Code, the Idaho capital gains deduction may only be claimed by individual taxpayers on an individual income tax return. (4-7-11)

**d.** Informational Items. Amounts provided to owners of pass-through entities and beneficiaries of trusts and estates on the federal Schedule K-1 that are informational only may not be used as a deduction in computing the taxable income reportable under Section 63-3022L, Idaho Code. Informational items include the domestic production activities information and net earnings from self-employment. (4-7-11)

**e.** Items Not Deductible Under the Internal Revenue Code. A deduction is not allowed for items disallowed under the Internal Revenue Code. For example, a deduction is not allowed for items disallowed as a deduction in Sections 162(c) and 262 through 280E, Internal Revenue Code, unless specifically allowed by Idaho law. Items allowed by Idaho law include expenses related to tax-exempt income under Section 265, Internal Revenue Code, which are allowed to be deducted as a result of Section 63-3022M, Idaho Code. (4-7-11)

**f.** Items Not Reported as a Pass-Through Deduction. Amounts not reported from the pass-through entity to the pass-through owner are not allowed as a deduction under Section 63-3022L, Idaho Code. These include: (4-7-11)

i. The standard deduction; (4-7-11)

ii. Personal exemptions; (4-7-11)

iii. Itemized deductions that result from activity of the pass-through owner. For example, a deduction is not allowed for charitable contributions made personally by the pass-through owner, but is allowed for the pass-through owner's share of charitable contributions made by the pass-through entity. (4-7-11)

**04. Double Deductions Disallowed.** A pass-through owner may not deduct amounts that previously have been deducted by a pass-through entity paying the tax on his behalf. If the pass-through owner files an Idaho individual income tax return reporting federal taxable income that includes amounts previously deducted by a pass-through entity on his behalf, the pass-through owner must add back the duplicated deduction amounts in computing his Idaho taxable income on his individual income tax return. (4-7-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**714. IDAHO INVESTMENT TAX CREDIT: CREDIT EARNED ON PROPERTY USED BOTH IN AND OUTSIDE IDAHO IN TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 1995 (RULE 714).**  
Section 63-3029B, Idaho Code. (3-20-97)

**01. In General.** Property must be used at least part of the time in Idaho to qualify for the investment tax credit, provided it otherwise qualifies for the credit. It must also be used in Idaho in each succeeding year to which a carryover may be taken. (3-20-97)

**02. Election of Methods.** The taxpayer must elect to compute the investment tax credit on property used both in and outside Idaho using either the percentage-of-use method or the amount of that property correctly included in the Idaho property factor numerator. The credit for all property used both in and outside Idaho must be computed using the method elected. (4-2-08)

**a. Percentage-of-Use Method.** If the percentage-of-use method is elected, the basis of each qualified asset is multiplied by the percentage of time, miles, or other measure that accurately reflects the use of that asset in Idaho. The use of aircraft within and without Idaho during the taxable year shall be determined by the ratio of departures from locations in Idaho to total departures. ~~See Subsection 713.04.a. of these rules for an example of the percentage-of-use method.~~ (7-1-98)( )

**b. Property Factor Method.** If the property factor numerator option is elected, the qualified investment is the basis of the asset correctly included in the numerator of the Idaho property factor for the year the credit is earned. (4-2-08)( )

**i.** The amounts of investment tax credit computed under the percentage-of-use method and the property factor numerator option are generally the same. Differences may result when a taxpayer uses certain MTC special industry regulations that allow the taxpayer to vary from using the percentage-of-use method for determining the Idaho numerator for each item of mobile property, and instead allow another method, such as the ratio of mobile property miles in the state compared to total mobile property miles or the ratio of departures of aircraft from locations in the state compared to total departures. These special industry regulations include the regulations for airlines, railroads, and trucking companies. See Rule 580 of these rules for a list of the special industries. (4-2-08)

**ii.** “Correctly included in the numerator of the Idaho property factor” means that the amount included in the Idaho property factor numerator was correctly computed using Section 63-3027, Idaho Code, and related rules including any MTC special industry regulations that apply to the taxpayer. If the amount included in the Idaho property factor numerator exceeds the amount that should have been included using Section 63-3027, Idaho Code and related rules, the investment tax credit shall be allowed only on the amount that reflects the correct calculation for purposes of computing the Idaho property factor numerator. For example, a taxpayer includes one hundred percent (100%) of the basis of an asset in the Idaho property factor numerator, but the amount correctly computed under Section 63-3027, Idaho Code, should have been fifty percent (50%) of the basis of the asset. The investment tax credit shall be allowed only on the fifty percent (50%) of the basis of the asset. (4-2-08)

**03. Order of Limitations.** The qualified investment in property used both in and outside Idaho is determined by first applying the rules of this section and then the used property limitations outlined in Rule 710. ( )

**04. Examples.** ( )

**a.** Idaho Percentage-of-Use Method. In January 2009, a calendar year corporation purchased a road grader for fifty thousand dollars (\$50,000). Thirty percent (30%) of its hours were logged in Idaho during the year. No other qualified investments were made during 2009. The taxpayer elected to compute the credit using the percentage-of-use method. The taxpayer has a fifteen thousand dollar (\$15,000) qualified investment computed by multiplying thirty percent (30%) by fifty thousand dollars (\$50,000). The investment tax credit is computed at three percent (3%) of fifteen thousand dollars (\$15,000) for a credit of four hundred fifty dollars (\$450). ( )

**b.** Idaho Percentage-of-Use Method -- Assets placed in service within ninety (90) days of year end. A calendar year taxpayer elects the percentage-of-use method for a road grader placed in service on March 1, 2011, with a basis of seventy-five thousand dollars (\$75,000). If eighty percent (80%) of the road grader's hours were logged in Idaho measured between March 1 and December 31, 2011, the qualifying investment in the road grader is sixty thousand dollars (\$60,000) computed at eighty percent (80%) of the asset's basis. If the road grader was placed in service by the same calendar year taxpayer on November 1, 2011, the Idaho qualifying property is measured during the first ninety (90) days of use of the asset. If the percentage of hours logged in Idaho between November 1, 2011, and January 31, 2012, is seventy percent (70%), the qualifying investment in the road grader is fifty-two thousand five hundred dollars (\$52,500) computed at seventy percent (70%) of the asset's basis. ( )

**c.** Idaho Property Factor Method. In January, 2011, a calendar year corporation purchased a road grader for fifty thousand dollars (\$50,000). Twenty percent (20%) of its hours were logged in Idaho during the year. In addition to the road grader, the taxpayer also purchased an asphalt layer and a dump truck in January, 2011. Twenty percent (20%) of the dump truck's hours were logged in Idaho during the year. Only the road grader and dump truck were used in Idaho during the year. The taxpayer's Idaho property factor is thirty percent (30%). The dump truck cost seventy-five thousand dollars (\$75,000), and the asphalt layer cost two hundred thousand dollars (\$200,000). The taxpayer has qualified investments totaling twenty-five thousand dollars (\$25,000), computed at twenty percent (20%) of the one hundred twenty-five thousand dollars (\$125,000) basis in the road grader and the dump truck. The investment tax credit is computed at three percent (3%) of the twenty-five thousand dollars (\$25,000) for a total credit of seven hundred fifty dollars (\$750). The taxpayer would include twenty-five thousand dollars (\$25,000) in the Idaho property factor numerator. The asphalt layer does not qualify for the credit since it was not used in Idaho at any time during 2011. ( )

**d.** Order of Limitations. Assume the taxpayer has two (2) asphalt layers costing two hundred thousand dollars (\$200,000) each that are both mobile and used property. Fifty percent (50%) of the hours of both asphalt layers was logged in Idaho during the year. The taxpayer has a two hundred thousand dollar (\$200,000) qualified investment computed by multiplying fifty percent (50%) by four hundred thousand dollars (\$400,000). The used property limitation of one hundred fifty thousand dollars (\$150,000) is applied to the two hundred thousand dollar (\$200,000) qualified investment and the investment tax credit allowed is computed at three percent (3%) of the one hundred fifty thousand dollars (\$150,000). ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**877. BACKUP WITHHOLDING BY PASS-THROUGH ENTITIES (RULE 877).**

Sections 63-3022L and 63-3036B, Idaho Code.

(4-7-11)

**01. In General.** A pass-through entity that is transacting business in Idaho or an estate or trust that has income taxable in Idaho must withhold Idaho income tax from the owner's or beneficiary's share of income and guaranteed payments from the pass-through entity ~~and from wages, salary, or other compensation paid by the pass-through entity to the individual~~ that is required to be included in the individual's Idaho taxable income unless exempt from backup withholding by Section 63-3036B, Idaho Code, or this rule. For purposes of this rule, pass-through entity means "pass-through entity" as defined in Section 63-3006C, Idaho Code. The provisions of this rule do not affect the withholding requirements set forth in Sections 63-3035, 63-3035A, or 63-3036, Idaho Code, and related rules. ~~(2-27-12)~~( )

**02. Exceptions to Backup Withholding.** Backup withholding by a pass-through entity is not required

on the income of the following pass-through owners and beneficiaries: (2-27-12)

**a.** Owners and beneficiaries who are not natural persons, including corporations, partnerships, trusts, and estates. (4-7-11)

**b.** Unit holders of a publicly traded partnership as defined by Section 7404(b), Internal Revenue Code, if the publicly traded partnership: (4-7-11)

i. Is treated as a partnership for purposes of the Internal Revenue Code; and (4-7-11)

ii. Has agreed to file an annual information return. The information return must be in the form of a schedule included with the partnership's Idaho Partnership Return of Income reporting the name, address, taxpayer identification number, and other information requested by the Tax Commission of each unit holder with a distributive share of partnership income in Idaho in excess of five hundred dollars (\$500) for the taxable year. (2-27-12)

**c.** Resident individuals and part-year resident individuals who have income other than from a pass-through entity. (2-27-12)

**d.** Nonresident individuals if: (4-7-11)

i. ~~Such individual elects to have his Idaho tax on income from the pass-through entity reported and paid by the pass-through entity. Such election must be made on a form as required by the Tax Commission and is required for each taxable year by the last day of the month following the end of the taxable year. Such election is irrevocable. The pass-through entity has reported and paid the tax relating to the individual on a composite return pursuant to Section 63-3022L, Idaho Code.~~ (2-27-12)( )

ii. Such individual's share of income, and guaranteed payments, ~~and compensation~~ of the pass-through entity from Idaho sources is less than one thousand dollars (\$1,000) for the taxable year in which the income is subject to tax; ~~or~~ (2-27-12)( )

iii. The income is subject to withholding under Section 63-3035 or 63-3036, Idaho Code; ~~or~~ (2-27-12)( )

iv. The individual has signed and the pass-through entity has approved an Idaho nonresident owner agreement. ( )

**03.** ~~**Certification of Residency.** Backup withholding is not required on income from a pass-through entity of an individual owner or beneficiary who certifies to the pass-through entity that he is an Idaho resident or an Idaho part-year resident with Idaho taxable income from sources other than another pass-through entity. The certification must be made on a form approved by the Tax Commission. The pass-through entity may rely on the certificate as evidence that the income from the pass-through entity of such individual is exempt from withholding unless the pass-through entity knowingly accepts a false certificate.~~ **Idaho Nonresident Owner Agreement.** When an individual signs an Idaho nonresident owner agreement, he agrees to file and pay tax on his share of Idaho income from a pass-through entity. The signed agreement must be the proper form prescribed by the Tax Commission and must be submitted to the pass-through entity each year. The pass-through entity must sign and approve the nonresident owner agreement for it to be valid. Their approval will signify their acknowledgment that they are liable for any tax due at the corporate rate if the individual fails to file a return as agreed. If the pass-through entity does not approve the nonresident owner agreement, the pass-through entity must withhold or include the individual in the composite return. The pass-through entity must retain the forms for three years following the end of the taxable year for which it is to apply. (2-27-12)( )

**04. Payment of Backup Withholding.** (4-7-11)

**a.** The pass-through entity must withhold amounts from the pass-through income of nonresident individuals at the highest marginal rate applicable for the taxable year under Section 63-3024, Idaho Code. The amount withheld for a taxable year must be remitted to the Tax Commission annually on or before the fifteenth day of the fourth month following the end of the taxable year, unless one of the exceptions under Subsection 877.02 of this

rule apply to the owner or beneficiary. The amount withheld must be remitted on the appropriate return as required by the Tax Commission. (2-27-12)

**b.** Amounts remitted as backup withholding for a taxable year in accordance with the provisions of this rule will be considered to be in part payment of the tax imposed on such owner or beneficiary for his taxable year in which the pass-through entity's taxable year ends. (2-27-12)

**05. Backup Withholding Returns.** A reconciliation schedule must be included with the pass-through entity's Idaho income tax return. Returns submitted to the Tax Commission reporting amounts withheld as required by Section 63-3036B, Idaho Code, must include the following information: (2-27-12)

**a.** The amount of income described in Section 63-3022L(2), Idaho Code, by owner or beneficiary; (2-27-12)

**b.** The amount of tax withheld; (4-7-11)

**c.** Name, address, filing option, and social security number of each owner or beneficiary; (~~4-7-11~~)( )

**d.** The pass-through entity's name, and federal employer identification number. (2-27-12)

**06. Failure to File Returns or Remit Backup Withholding.** Returns that fail to meet the requirements of this rule are invalid and may be returned to the pass-through entity to be refiled. Failure to file a valid return or remit the proper amount of backup withholding by the due date may cause interest and penalties to be imposed. (2-27-12)



# **IDAPA 35 - IDAHO STATE TAX COMMISSION**

## **35.01.01 - INCOME TAX ADMINISTRATIVE RULES**

### **DOCKET NO. 35-0101-1202**

#### **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 63-105 and 63-3039, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

Rule 075 is being amended to conform to Idaho Code section 63-3024 and adds tax brackets for calendar year 2012 and removes the information for calendar year 2007 so only five years of historical data is retained in the rule.

Rule 105 conforms to Idaho Code section 63-3022(i) to provide that passive losses incurred in years during which a taxpayer had no activity in Idaho are not deductible. This change treats passive losses in a manner identical to the treatment of net operating losses and capital losses.

Rules 108 and 253 conforms to Idaho Code section 63-3022O which removes the prohibition allowing the deduction of classroom supplies and other expenses not to exceed \$250 of elementary and secondary teachers otherwise allowable under Section 62(a)(2)(D) of the Internal Revenue Code.

Rule 121 conforms to Idaho Code section 63-3022B by revising the eligibility criteria for taking a state income tax deduction for installing energy efficiency upgrade measures within existing residences.

Rule 285 conforms to Idaho Code sections 63-3022L & 63-3036B by revising the provisions relating to the taxation of income of owners of an interest in a pass-through entity and regarding backup withholding for pass-through entities.

Rule 286 is being amended to clarify the allocation and apportionment procedures used when an S corporation and its qualified subchapter S subsidiaries (QSSS) are carrying on more than one unitary business.

Rules 710 and 719 are being amended to clarify the order of limitations for the Idaho investment tax credit. When a taxpayer has both mobile and used property that qualifies for the Idaho investment tax credit, the eligible amount is first determined under the mobile property rules and then the used property limitation is applied.

Rules 745,746,747,748 conform to Idaho Code sections 63-3029E & 63-3029EE which corrects an oversight from the Hire One Act of 2011 by allowing companies to continue to receive the new jobs tax credit up until the start of the Hire One Act and has a sunset date of January 1, 2017.

Rule 771 conforms to Idaho Code section 63-3024A which sets the amounts of the grocery credit for 2008 and provides for an increase in the amounts for subsequent years. These increases are automatic unless certain actions as provided in Idaho Code are taken by the Legislature or the Governor.

Rule 810 conforms to Idaho Code section 63-217 by providing that if the date for filing any report, claim, tax return, statement or other document or making any such payment falls upon a Saturday, Sunday, legal holiday or a holiday recognized by the Internal Revenue Service, such acts shall be considered timely if performed on the next business day.

**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:

- Rules 108 and 253 will have a \$275,000 reduction of revenue.
- Rule 121 will have a \$925,000 reduction of revenue for FY13 increasing to \$1 million by FY15.
- Rules 745, 746, 747, and 748 will have a \$125,000 reduction of revenue.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes were of a simple nature or complied with statutory changes.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cynthia Adrian at (208) 334-7670.

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 close of business Wednesday, October 24, 2012.

DATED this 31st day of August, 2012.

Cynthia Adrian  
Tax Policy Specialist  
Idaho State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7670

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0101-1202**

**075. TAX ON INDIVIDUALS, ESTATES, AND TRUSTS (RULE 075).** (3-20-04)  
Section 63-3024, Idaho Code.

**01. In General.** The tax rates applied to the Idaho taxable income of an individual, trust or estate for the latest five (5) years are identified in Subsection 075.03 of this rule. The Idaho income tax brackets are adjusted for inflation. The maximum tax rate as listed for the applicable taxable year in Subsection 075.03 of this rule applies in computing the tax attributable to the S corporation stock held by an electing small business trust. See Rule 078 of these rules. (4-7-11)

**02. Tax Computation.** (5-3-03)

**a.** The tax rates and income tax brackets listed in Subsection 075.03 of this rule are those for a single individual or married individuals filing separate returns. (4-6-05)

**b.** The tax imposed on individuals filing a joint return, filing as a surviving spouse, or filing as a head of household is twice the tax that would be imposed on one-half (1/2) of the total Idaho taxable income of a single individual. (4-7-11)

**c.** For example, if a married couple filing a joint return reports Idaho taxable income of thirty thousand dollars (\$30,000), the tax is computed as if they had taxable income of fifteen thousand dollars (\$15,000).

The tax amount is multiplied by two (2). (4-7-11)

**03. Tables Identifying the Idaho Tax Rates and Income Tax Brackets.** (3-20-04)

*a. For taxable years beginning in 2007:*

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,237.00	\$0	+ 1.6% of taxable income
\$1,237.00	\$2,474.00	\$10.79	+ 3.6% of the amount over \$1,237.00
\$2,474.00	\$3,710.00	\$64.31	+ 4.1% of the amount over \$2,474.00
\$3,710.00	\$4,947.00	\$115.02	+ 5.1% of the amount over \$3,710.00
\$4,947.00	\$6,184.00	\$178.10	+ 6.1% of the amount over \$4,947.00
\$6,184.00	\$9,276.00	\$253.55	+ 7.1% of the amount over \$6,184.00
\$9,276.00	\$24,736.00	\$473.08	+ 7.4% of the amount over \$9,276.00
\$24,736.00 or more		\$1,617.13	+ 7.8% of the amount over \$24,736.00

*Tax and bracket amounts were calculated using consumer price index amounts published on May 17, 2007.*

(4-7-11)

*b.a. For taxable years beginning in 2008:*

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$1.00	\$1,272.00	\$0	+ 1.6% of taxable income
\$1,272.00	\$2,544.00	\$20.35	+ 3.6% of the amount over \$1,272.00
\$2,544.00	\$3,816.00	\$66.15	+ 4.1% of the amount over \$2,544.00
\$3,816.00	\$5,088.00	\$118.30	+ 5.1% of the amount over \$3,816.00
\$5,088.00	\$6,360.00	\$183.17	+ 6.1% of the amount over \$5,088.00
\$6,360.00	\$9,540.00	\$260.77	+ 7.1% of the amount over \$6,360.00
\$9,540.00	\$25,441.00	\$486.55	+ 7.4% of the amount over \$9,540.00
\$25,441.00 or more		\$1,663.19	+ 7.8% of the amount over \$25,441.00

*Tax and bracket amounts were calculated using consumer price index amounts published on March 12, 2008.*

(4-7-11)

*b.b. For taxable years beginning in 2009:*

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is	Plus	
\$1	\$1,321	\$0	+	1.6% of taxable income
\$1,321	\$2,642	\$21.13	+	3.6% of the amount over \$1,321
\$2,642	\$3,963	\$68.69	+	4.1% of the amount over \$2,642
\$3,963	\$5,284	\$122.84	+	5.1% of the amount over \$3,963
\$5,284	\$6,604	\$190.21	+	6.1% of the amount over \$5,284
\$6,604	\$9,907	\$270.78	+	7.1% of the amount over \$6,604
\$9,907	\$26,418	\$505.24	+	7.4% of the amount over \$9,907
\$26,418 or more		\$1,727.05	+	7.8% of the amount over \$26,418

Tax and bracket amounts were calculated using consumer price index amounts published on April 28, 2009.

(4-7-11)

**dc.** For taxable years beginning in 2010:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is	Plus	
\$1	\$1,316	\$0	+	1.6% of taxable income
\$1,316	\$2,632	\$21.06	+	3.6% of the amount over \$1,316
\$2,632	\$3,948	\$68.44	+	4.1% of the amount over \$2,632
\$3,948	\$5,264	\$122.40	+	5.1% of the amount over \$3,948
\$5,264	\$6,580	\$189.52	+	6.1% of the amount over \$5,264
\$6,580	\$9,870	\$269.80	+	7.1% of the amount over \$6,580
\$9,870	\$26,320	\$503.39	+	7.4% of the amount over \$9,870
\$26,320 or more		\$1,720.69	+	7.8% of the amount over \$26,320

Tax and bracket amounts were calculated using consumer price index amounts published on May 4, 2010.

(4-7-11)

**ed.** For taxable years beginning in 2011:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is	Plus	
\$1	\$1,338	\$0	+	1.6% of taxable income
\$1,338	\$2,676	\$21.41	+	3.6% of the amount over \$1,338
\$2,676	\$4,014	\$69.58	+	4.1% of the amount over \$2,676

\$4,014	\$5,352	\$124.44	+	5.1% of the amount over \$4,014
\$5,352	\$6,690	\$192.68	+	6.1% of the amount over \$5,352
\$6,690	\$10,035	\$274.30	+	7.1% of the amount over \$6,690
\$10,035	\$26,760	\$511.80	+	7.4% of the amount over \$10,035
\$26,760 or more		\$1,749.45	+	7.8% of the amount over \$26,760
Tax and bracket amounts were calculated using consumer price index amounts published on May 24, 2011.				

(2-27-12)

**e. For taxable years beginning in 2012:**

<b>IF IDAHO TAXABLE INCOME IS</b>		<b>IDAHO TAX</b>		
<b>At least</b>	<b>But less than</b>	<b>Is</b>	<b>Plus</b>	
\$1	\$1,380	\$0	±	1.6% of taxable income
\$1,380	\$2,760	\$22.08	±	3.6% of the amount over \$1,380
\$2,760	\$4,140	\$71.76	±	4.1% of the amount over \$2,760
\$4,140	\$5,520	\$128.34	±	5.1% of the amount over \$4,140
\$5,520	\$6,900	\$198.72	±	6.1% of the amount over \$5,520
\$6,900	\$10,350	\$282.90	±	7.1% of the amount over \$6,900
\$10,350 or more		\$527.85	±	7.4% of the amount over \$10,350
Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2012.				

( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**105. ADJUSTMENTS TO TAXABLE INCOME -- ADDITIONS REQUIRED OF ALL TAXPAYERS (RULE 105).**

Section 63-3022, Idaho Code. The following items must be added by all taxpayers in computing Idaho taxable income. (2-27-12)

**01. State and Local Income Taxes.** As provided in Section 63-3022(a), Idaho Code, state and local income taxes that were deducted in computing taxable income must be added. This includes taxes paid to states other than Idaho and their political subdivisions, and amounts paid by an S corporation on capital gains, built-in gains, and excess net passive income. (2-27-12)

**02. Net Operating Loss Deduction.** As provided in Section 63-3022(b), Idaho Code, the amount of the net operating loss deduction included in taxable income must be added. (2-27-12)

**03. Capital Loss Carryover Deduction.** As provided in Section 63-3022(i), Idaho Code: (3-30-01)

**a.** A corporation must add a capital loss or passive loss that was deducted in computing taxable income if the capital loss occurred during a taxable year when the corporation did not transact business in Idaho, unless the corporation was part of a unitary group with at least one (1) member of the group taxable by Idaho for that

taxable year. (2-27-12)( )

**b.** An individual must add a capital loss or passive loss that was deducted in computing taxable income if the ~~capital~~ loss was incurred in an activity not taxable by Idaho at the time it was incurred. (2-27-12)( )

**04. Interest and Dividend Income Exempt From Federal Taxation.** As provided in Section 63-3022M, Idaho Code, certain interest and dividend income that is exempt from federal income tax must be added. For example, interest income from state and local bonds that is exempt from federal income tax pursuant to Section 103, Internal Revenue Code, must be added. (2-27-12)

**a.** Interest from bonds issued by the state of Idaho or its political subdivisions is exempt from Idaho income tax and, therefore, is not required to be added to taxable income. (3-20-97)

**b.** If a taxpayer has both Idaho and non-Idaho state and municipal interest income, expenses not allowed pursuant to Sections 265 and 291, Internal Revenue Code, must be prorated between the Idaho and non-Idaho interest income as provided in Subsections 105.04.b.i. and 105.04.b.ii. The addition to taxable income required for non-Idaho state and municipal interest income must be offset by the expenses prorated to that interest income. The allowable offset may not exceed the reportable amount of interest income. An unused offset may not be carried back or carried over. A schedule showing the interest and related offsets must be attached to the return. (2-27-12)

**i.** Expenses prorated to Idaho state and municipal interest income are based on the ratio of Idaho state and municipal interest income to total state and municipal interest income. (2-27-12)

**ii.** Expenses prorated to non-Idaho state and municipal interest income are based on the ratio of non-Idaho state and municipal interest income to total state and municipal interest income. (2-27-12)

**05. Interest Expense Attributable to Tax-Exempt Interest Income.** As provided by Section 63-3022M, Idaho Code, a taxpayer must add interest expense on indebtedness incurred to purchase or carry certain obligations that produce tax-exempt interest income. Because this addition serves to offset the tax-exempt interest income, it is often referred to as an interest expense offset related to tax-exempt interest income. See Rule 115 of these rules for the computation of the interest expense offset related to tax-exempt interest. (2-27-12)

**06. Special First-Year Depreciation Allowance.** As provided by Section 63-3022O, Idaho Code, if a taxpayer claims the special first-year depreciation allowance on property acquired before 2008 or after 2009 pursuant to Section 168(k), Internal Revenue Code, the adjusted basis of that property and the depreciation deduction allowed for Idaho income tax purposes must be computed without regard to the special first-year depreciation allowance. The amount of depreciation computed for federal income tax purposes that exceeds the amount of depreciation computed for Idaho income tax purposes must be added. The adjustments required by this subsection do not apply to property acquired after 2007 or before 2010. (2-27-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**108. ADJUSTMENTS TO TAXABLE INCOME -- ADDITIONS REQUIRED ONLY OF INDIVIDUALS (RULE 108).**  
Section 63-3022, Idaho Code. (3-20-97)

**01. Lump Sum Distributions.** As provided in Section 63-3022(k), Idaho Code, an individual must add the taxable amount of a lump sum distribution excluded from taxable income. (4-7-11)

**02. Withdrawals from an Idaho Medical Savings Account.** As provided in Section 63-3022K, Idaho Code, an account holder must add the amount of a withdrawal from an Idaho medical savings account if the withdrawal was not made for the purpose of paying eligible medical expenses. See Rule 190 of these rules. (4-7-11)

**03. Withdrawals from an Idaho College Savings Program.** (4-2-08)

**a.** As provided in Section 63-3022(o), Idaho Code, an account owner must add the amount of any nonqualified withdrawal from an Idaho college savings program, less the amount included in the account owner's gross income. Nonqualified withdrawal is defined in Section 33-5401, Idaho Code. (3-20-04)

**b.** As provided in Section 63-3022(p), Idaho Code, an account owner must add the amount of a withdrawal from an Idaho college savings program that is transferred on or after July 1, 2007 to a qualified tuition program operated by a state other than Idaho. For taxable years beginning on or after January 1, 2008, the addback is limited to the total of the amounts contributed to the Idaho college savings program that were deducted on the account owner's Idaho income tax returns for the year of the transfer and the immediately preceding taxable year. (4-7-11)

**04. Certain Expenses of Eligible Educators.** As provided in Section 63-3022O, Idaho Code, prior to January 1, 2012, an eligible educator as defined in Section 62, Internal Revenue Code, must add the amount of out-of-pocket classroom expenses deducted as allowed by Section 62, Internal Revenue Code, in computing adjusted gross income. ~~(3-20-04)~~( )

**05. State and Local Sales Tax.** As provided in Section 63-3022(j), Idaho Code, an individual must add the amount of state and local general sales taxes deducted as an itemized deduction. (4-7-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**121. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE ONLY TO INDIVIDUALS (RULE 121).**

Section 63-3022, Idaho Code. (3-20-97)

**01. Income Not Taxable by Idaho.** As provided in Section 63-3022(f), Idaho Code, subtract the amount of income that is exempt from Idaho income tax if included in taxable income. Income exempt from taxation by Idaho includes the following: (7-1-99)

**a.** Certain income earned by American Indians. See Rule 033 of these rules. (5-3-03)

**b.** Retirement payments received pursuant to the old Teachers' Retirement System. Prior to its repeal on July 1, 1967, the old Teachers' Retirement System was codified at Title 33, Chapter 13, Idaho Code. Teachers who were employed by the state of Idaho and who retired on or after January 1, 1966, generally do not qualify for this exemption. Teachers who were not state employees and who retired on or after January 1, 1968, do not qualify. Teachers receiving benefits pursuant to the Public Employees' Retirement System, Title 59, Chapter 13, Idaho Code, do not qualify for the exemption. No exemption is provided for amounts received from other states, school districts outside Idaho, or any other source if the proceeds do not relate to teaching performed in Idaho. (3-20-97)

**02. Military Compensation for Service Performed Outside Idaho.** As provided in Section 63-3022(h), Idaho Code, certain members of the United States Armed Forces may deduct from taxable income their military service pay received for military service performed outside Idaho. See Rule 032 of these rules. (3-30-01)

**03. Standard or Itemized Deduction.** As provided in Section 63-3022(j), Idaho Code, deduct either the standard deduction amount as defined in Section 63, Internal Revenue Code, or the itemized deductions allowed by the Internal Revenue Code. If itemized deductions are limited pursuant to the Internal Revenue Code, they are also limited for Idaho income tax purposes. (3-30-01)

**a.** If state and local income or general sales taxes are included in itemized deductions for federal purposes pursuant to Section 164, Internal Revenue Code, they shall be added to taxable income. If itemized deductions are limited pursuant to Section 68, Internal Revenue Code, the amount of state and local income or general sales taxes added back shall be computed by dividing the amount of itemized deductions that are allowed to the taxpayer after all federal limitations by total itemized deductions before the Section 68 limitation. For taxable years beginning in or after 2007, this proration shall be calculated four (4) digits to the right of the decimal point. If

the fifth digit is five (5) or greater, the fourth digit is rounded to the next higher number ( $\$10,000/\$15,000 = .66666 = .6667 = 66.67\%$ ). If the fifth digit is less than five (5), the fourth digit remains unchanged and any digits remaining to its right are dropped ( $\$10,000/\$30,000 = .33333 = .3333 = 33.33\%$ ). The percentage may not exceed one hundred percent (100%) nor be less than zero (0). The result is then applied to state and local income or general sales taxes to determine the Idaho state and local income and general sales tax addback. See Rule 105 of these rules. (4-2-08)

**b.** If an itemized deduction allowable for federal income tax purposes is reduced for the mortgage interest credit or the foreign tax credit, the amount that would have been allowed if the federal credit had not been claimed is allowed as an itemized deduction. (7-1-99)

**c.** For taxable years beginning on or after January 1, 2000, the standard deduction allowed on a married filing joint return shall be equal to two (2) times the basic standard deduction for a single individual. Add to this amount any additional standard deduction for the aged or blind allowed for federal income tax purposes. (3-30-01)

**04. Social Security and Railroad Retirement Benefits.** As provided in Section 63-3022(1), Idaho Code, subtract from taxable income the amount of social security and certain railroad retirement benefits included in gross income pursuant to Section 86, Internal Revenue Code. (3-30-01)

**a.** The term social security benefits includes United States social security benefits and Canadian social security pensions received by a United States resident that are treated as United States social security benefits for United States income tax purposes. (7-1-99)

**b.** The term certain railroad retirement benefits means the following amounts paid by the Railroad Retirement Board: (4-6-05)

**i.** Annuities, supplemental annuities, and disability annuities, including the Tier I social security equivalent benefits, and the Tier II pension amounts; (4-6-05)

**ii.** Railroad unemployment; and (4-6-05)

**iii.** Sickness benefits. (4-6-05)

**05. Self-Employed Worker's Compensation Insurance Premiums.** As provided in Section 63-3022(m), Idaho Code, self-employed individuals may subtract from taxable income the premiums paid to secure worker's compensation insurance for coverage in Idaho if the premiums have not been previously deducted in computing taxable income. The term worker's compensation insurance means "workmen's compensation" as defined in Section 41-506(d), Idaho Code. Premiums paid to secure worker's compensation insurance coverage are those payments made in compliance with Section 72-301, Idaho Code. (3-30-01)

**06. Retirement Benefits.** As provided in Section 63-3022A, Idaho Code, and Rule 130 of these rules, a deduction from taxable income is allowed for certain retirement benefits. (3-20-97)

**07. ~~Insulation of an Idaho Residence~~ Energy Efficiency Upgrades.** As provided in Section 63-3022B, Idaho Code, and Rule 140 of these rules, a deduction from taxable income is allowed for qualified expenses related to the ~~addition~~ installation of ~~insulation of an Idaho~~ energy efficiency upgrades in the residence ~~of the taxpayer~~ built or subject to an outstanding building permit on or before ~~1976~~ 2002. ~~(2-27-12)~~(    ) (3-20-97)

**08. Alternative Energy Devices.** As provided in Section 63-3022C, Idaho Code, and Rule 150 of these rules, a deduction from taxable income is allowed for qualified expenses related to the acquisition of an alternative energy device used in an Idaho residence of the taxpayer. (3-20-97)(    )

**09. Household and Dependent Care Services.** As provided in Section 63-3022D, Idaho Code, and Rule 160 of these rules, a deduction from taxable income is allowed for certain employment related expenses incurred for the care of qualifying individuals. (3-20-97)

**10. Household Deduction for Elderly or Developmentally Disabled Dependents.** As provided in



Section 63-3022E, Idaho Code, and Rule 165 of these rules, a deduction from taxable income is allowed for maintaining a household where an elderly or developmentally disabled family member resides. (3-20-97)

**11. Reparations to Displaced Japanese Americans.** As provided in Section 63-3022G, Idaho Code, certain individuals are allowed a deduction for amounts included in taxable income relating to reparation payments from the United States Civil Liberties Public Education Fund. (3-20-97)

**12. Capital Gains.** As provided in Section 63-3022H, Idaho Code, and Rules 170 through 173 of these rules, a deduction from taxable income may be allowed for net capital gains recognized from the sale of qualified Idaho property. (2-27-12)

**13. Adoption Expenses.** As provided in Section 63-3022I, Idaho Code, and Rule 185 of these rules, a deduction from taxable income is allowed for certain expenses incurred when adopting a child. (3-20-97)

**14. Idaho Medical Savings Account.** As provided in Section 63-3022K, Idaho Code, and Rule 190 of these rules, a deduction from taxable income is allowed for qualifying contributions to and interest earned on an Idaho medical savings account. (4-5-00)

**15. Idaho College Savings Program.** As provided in Section 63-3022(n), Idaho Code, a deduction from taxable income is allowed for qualifying contributions to a college savings program. (3-15-02)

**16. Health Insurance Costs.** A deduction from taxable income is allowed for the amounts paid by the taxpayer during the taxable year for insurance that constitutes medical care, as defined in Section 63-3022P, Idaho Code, for the taxpayer, the spouse or dependents of the taxpayer not otherwise deducted or accounted for by the taxpayer for Idaho income tax purposes. See Rule 193 of these rules. (5-3-03)

**17. Unused Net Operating Losses of Estates and Trusts.** An unused net operating loss carryover remaining on termination of an estate or trust is allowed to the beneficiaries succeeding to the property of the estate or trust. The carryover amount is the same in the hands of the beneficiaries as in the hands of the estate or trust. The first one hundred thousand dollars (\$100,000) of loss sustained in any taxable year of an estate or trust must first be carried back by the estate or trust unless an election has been made as provided by Section 63-3022(c), Idaho Code, to forego the carryback. The first taxable year of the beneficiaries to which the net operating loss is to be carried is the taxable year of the beneficiary in which the estate or trust terminates. No part of a net operating loss incurred by an estate or trust can be carried back by a beneficiary, even if the estate or trust had no preceding taxable years eligible for a carryback. For purposes of determining the number of years to which a loss may be carried over by a beneficiary, the last taxable year of the estate or trust and the first taxable year of the beneficiary to which a loss is carried over each constitute a taxable year. (2-27-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**253. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- ADDITIONS REQUIRED IN COMPUTING IDAHO ADJUSTED INCOME.**

Section 63-3026A(6), Idaho Code. The following items must be added to Idaho adjusted gross income in computing the Idaho adjusted income of nonresident and part-year resident individuals. (4-7-11)

**01. Interest and Dividends Not Taxable Pursuant to the Internal Revenue Code.** (3-20-97)

**a.** Part-Year Residents. Interest and dividend income not taxable pursuant to the Internal Revenue Code that was received while residing in or domiciled in Idaho must be added. However, interest received from obligations of the state of Idaho or any political subdivision of Idaho is exempt from Idaho income tax and is not added. (4-7-11)

**b.** Nonresidents. Interest and dividend income reportable from a pass-through entity that was transacting business in Idaho must be added to the extent the income was apportioned or allocated as Idaho income.

See Rule 263 of these rules for multistate apportionment rules. (4-7-11)

**02. Net Operating Loss Deduction.** The amount of the net operating loss deduction included in Idaho adjusted gross income must be added. (4-7-11)

**03. Capital Loss.** Capital losses included in Idaho adjusted gross income must be added if the loss was incurred while not residing in and not domiciled in Idaho, or if the loss relates to an activity not taxable by Idaho at the time the loss was incurred. (4-7-11)

**04. Lump Sum Distributions.** Part-year residents must add the taxable amount of a lump sum distribution deducted in calculating taxable income received while residing in or domiciled in Idaho. This includes both the ordinary income portion and the amount eligible for the capital gain election. (4-7-11)

**05. Idaho Medical Savings Account.** An account holder must add the amount of any nonqualified withdrawal from an Idaho medical savings account if the withdrawal was not made for the purpose of paying eligible medical expenses. (4-7-11)

**06. Idaho College Savings Program.** (4-7-11)

**a.** An account owner must add the amount of a nonqualified withdrawal from an Idaho college savings program, less the amount included in the account owner's Idaho adjusted gross income. Nonqualified withdrawal is defined in Section 33-5401, Idaho Code. (4-7-11)

**b.** As provided in Section 63-3022(p), Idaho Code, an account owner must add the amount of a withdrawal from an Idaho college savings program that is transferred on or after July 1, 2007, to a qualified tuition program operated by a state other than Idaho. For taxable years beginning on or after January 1, 2008, the addback is limited to the total of the amounts contributed to the Idaho college savings program that were deducted on the account owner's Idaho income tax returns for the year of the transfer and the immediately preceding taxable year. (4-7-11)

**07. Special First-Year Depreciation Allowance.** As provided by Section 63-3022O, Idaho Code, if a taxpayer claims the special first-year depreciation allowance on property acquired before 2008 or after 2009 pursuant to Section 168(k), Internal Revenue Code, the adjusted basis of that property and the depreciation deduction allowed for Idaho income tax purposes must be computed without regard to the special first-year depreciation allowance. An individual must add the amount of depreciation computed for federal income tax purposes that exceeds the amount of depreciation computed for Idaho income tax purposes. This addition does not apply to depreciation computed on property acquired after 2007 or before 2010. (2-27-12)

**08. Certain Expenses of Eligible Educators.** As provided in Section 63-3022O, Idaho Code, prior to January 1, 2012, the amount of out-of-pocket classroom expenses deducted pursuant to Section 62, Internal Revenue Code, must be added. (~~4-7-11~~) ( )

**285. S CORPORATIONS (RULE 285).** Sections 63-3025 and 63-3025A, Idaho Code. (4-2-08)

**01. Tax on S Corporations.** An S corporation that is transacting business in Idaho or authorized to transact business in Idaho is subject to the tax imposed by Section 63-3025, Idaho Code, if not paying the tax imposed by Section 63-3025A, Idaho Code. The tax imposed by Section 63-3025 or 63-3025A, Idaho Code, shall be computed on the total of the net recognized built-in gains and the excess net passive income of the S corporation attributable to Idaho for the taxable year. (4-2-08)

**a.** Net recognized built-in gains shall be determined pursuant to Section 1374, Internal Revenue Code, including any applicable limitations. (4-2-08)

**b.** Excess net passive income shall be determined pursuant to Section 1375, Internal Revenue Code, including any applicable limitations. (4-2-08)

**c.** If the tax computed in Subsection 285.01 of this rule is less than the minimum tax, the S

corporation shall pay the minimum tax. (4-2-08)

**02. Minimum Tax.** The minimum tax is required of every S corporation that is required to file a return. A name-holder or inactive S corporation that is authorized to do business in Idaho shall pay the minimum tax of twenty dollars (\$20) even though the S corporation did not conduct Idaho business activity during the taxable year. A nonproductive mining corporation generally is not required to pay the minimum tax. See Subsection 285.03 of this rule. (4-2-08)

**03. Nonproductive Mining Corporations.** A nonproductive mining corporation is a corporation that does not own any producing mines and does not engage in any business other than mining. An S corporation that qualifies as a nonproductive mining corporation is required to file and pay tax if it receives any other income. (4-2-08)

**04. Application of Credits.** If an S corporation was previously a C corporation with an Idaho income tax credit carryover at the time of the S corporation election, the S corporation may use any available credit carryover against the tax on the excess net passive income or net recognized built-in gains if the carryover period related to the Idaho income tax credit has not expired before the taxable year in which the tax must be reported. (4-2-08)

**05. Tax Resulting From the ~~Election Under~~ Requirements of Section 63-3022L, Idaho Code.** An S corporation shall be subject to tax at the corporate rate on the income required to be reported for qualifying shareholders ~~who make the election~~ under Section 63-3022L, Idaho Code. This tax shall be in addition to any tax the S corporation owes under Section 63-3025 or 63-3025A, Idaho Code. See Rules 290 and 291 of these rules for additional information ~~on the election and computing taxable income under Section 63-3022L, Idaho Code.~~ (4-2-08)( )

**06. Qualified Subchapter S Subsidiary.** A corporation that is a qualified subchapter S subsidiary (QSSS) shall be treated for Idaho income tax purposes the same as treated for federal income tax purposes. The QSSS will not be treated as a separate corporation, but all the assets, liabilities, and items of income, deduction, and credit of a QSSS shall be treated as assets, liabilities and such items of the S corporation. Since the QSSS is not treated as a separate taxpayer, it is not subject to the minimum tax. (4-2-08)

**286. S CORPORATIONS OPERATING WITHIN AND WITHOUT IDAHO (RULE 286).** Sections 63-3027 and 63-3030(a)(4), Idaho Code. (4-2-08)

**01. In General.** An S corporation that operates within and without Idaho must apply the principles of allocation and apportionment of income set forth in Section 63-3027, Idaho Code, and related rules to determine the extent of S corporation income that is derived from or related to Idaho sources. The use of a combined report, however, is available only to C corporations. (4-2-08)

**02. Exceptions to Apportionment Formula.** If the method described in Subsection 286.01 of this rule does not fairly represent the extent of the business activity in Idaho, the S corporation may file a request to use or the Tax Commission may require an alternative method, including the following: (4-2-08)

- a. Separate accounting as provided in Rule 585 of these rules; (4-2-08)
- b. The exclusion of a factor pursuant to Rule 590 of these rules; (4-2-08)
- c. An additional factor or substitute factor pursuant to Rule 595 of these rules; or (4-2-08)
- d. The employment of any other method that would fairly represent the extent of business activity in Idaho. (4-2-08)

**03. Information Provided to Shareholders.** An S corporation must provide to each shareholder information necessary for the shareholder to compute his Idaho income tax. Such information must include: (4-2-08)

- a. The shareholder's share of each pass-through item of income and deduction; (4-7-11)

- b.** The shareholder's share of each Idaho addition and subtraction; (4-7-11)
- c.** The shareholder's share of Idaho qualifying contributions, Idaho tax credits, and tax credit recapture; (4-7-11)
- d.** The shareholder's share of income allocated to Idaho; (4-7-11)
- e.** The S corporation's apportionment factor; and (4-7-11)
- f.** The shareholder's distributive share of S corporation gross income. (4-7-11)

**04. Protection Under Public Law 86-272.** An S corporation whose Idaho business activities fall under the protection of Public Law 86-272 is exempt from the taxes imposed by Sections 63-3025 and 63-3025A, Idaho Code, including the minimum tax. (4-2-08)

**05. Qualified Subchapter S Subsidiary.** A corporation that is a qualified subchapter S subsidiary (QSSS) must include its apportionment attributes with its parent's apportionment attributes to compute one Idaho apportionment factor for the S corporation. If the S corporation and its qualified subchapter S subsidiaries are carrying on more than one unitary business, each unitary business must allocate and apportion its income pursuant to Rule 340.03. (4-2-08)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**710. IDAHO INVESTMENT TAX CREDIT: IN GENERAL (RULE 710).**  
Section 63-3029B, Idaho Code. (3-20-97)

**01. Credit Allowed.** The investment tax credit allowed by Section 63-3029B, Idaho Code, applies to investments made during tax years beginning on and after January 1, 1982, that qualify pursuant to Sections 46(c), 47, and 48, Internal Revenue Code, as in effect prior to amendment by Public Law 101-508. Investments must also meet the requirements of Section 63-3029B, Idaho Code, and Rules 710 through 719 of these rules. (5-8-09)

**02. Limitations.** The investment tax credit allowable in any taxable year shall be limited by the following: (3-20-97)

**a.** Tax liability. (3-30-01)

**i.** For taxable years beginning on or after January 1, 2000, the credit claimed may not exceed fifty percent (50%) of the tax after credit for taxes paid another state. (3-30-01)

**ii.** For taxable years beginning on or after January 1, 1995 and before January 1, 2000, the credit claimed may not exceed forty-five percent (45%) of the tax after credit for taxes paid another state. (3-30-01)

**b.** Credit for qualifying new employees. If the credit for qualifying new employees is claimed in the current taxable year or carried forward to a future taxable year, the investment tax credit is limited by the provisions of Section 63-3029F, Idaho Code. (3-30-01)

**c.** Unitary taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. (3-30-01)

**d.** Nonrefundable credits. The investment tax credit is a nonrefundable credit. It is applied to the income tax liability in the priority order for nonrefundable credits described in Rule 799 of these rules. (3-15-02)

**e.** Used Property Limitation. The term used property limitation shall mean the one hundred fifty thousand dollar (\$150,000) limitation imposed by Section 48, Internal Revenue Code of 1986 prior to November 5,

1990.

( )

**03. Carryovers.** (3-20-97)

**a.** Investment tax credit earned on investments made on or after January 1, 1990, but not claimed against tax in the year earned is eligible for a seven (7) year carryover. If a credit carryover from these years is available to be carried into taxable years beginning on or after January 1, 2000, the credit carryover is extended from seven (7) years to fourteen (14) years. (3-30-01)

**b.** For example, a calendar year taxpayer earned investment tax credit in calendar year 1993. The taxpayer was unable to use all the credit in that year and in the subsequent carryover years. Carryover was remaining into the seventh and final carryover year, calendar year 2000. Since the taxpayer had eligible carryover going into a taxable year beginning on or after January 1, 2000, the carryover period changes from seven (7) years to fourteen (14) years. Assuming the carryover is available for the entire carryover period, and that there are no short period years, the last year that the carryover can be used will be calendar year 2007. If the seventh carryover year was a taxable year beginning prior to January 1, 2000, the carryover period has expired and is not extended. (3-30-01)

**c.** Investment tax credit earned on investments made in taxable years beginning on or after January 1, 2000, but not claimed against tax in the year earned is eligible for a fourteen (14) year carryover. (3-30-01)

**04. Motor Vehicle.** Motor vehicle means a self-propelled vehicle that is registered or may be registered for highway use pursuant to the laws of Idaho. Gross vehicle weight is determined by the manufacturer's specified gross vehicle weight. (3-20-97)

**05. Expensed Property.** The cost of property that the taxpayer elects to expense pursuant to Section 179, Internal Revenue Code, is not a qualified investment. (3-30-01)

**06. Bonus Depreciation.** The cost of property that the taxpayer elects to deduct as bonus first-year depreciation pursuant to Section 168(k), Internal Revenue Code, is not a qualified investment for property acquired after 2007. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**719. IDAHO INVESTMENT TAX CREDIT: PROPERTY TAX EXEMPTION IN LIEU OF (RULE 719).**  
Section 63-3029B, Idaho Code. (3-20-04)

**01. In General.** Beginning with calendar year 2003, a qualifying taxpayer may elect a two (2) year property tax exemption on personal property placed in service during the year. Property placed in service prior to January 1, 2003, does not qualify for the exemption. The personal property must be qualified investment as defined in Section 63-3029B, Idaho Code, and Rules 710 through 716 of these rules. If the property tax exemption is elected on an item of personal property, the taxpayer may not earn the investment tax credit on that item. The election is irrevocable. (3-20-04)

**02. Terms.** As used in this rule: (3-20-04)

**a. Qualifying Taxpayer.** A taxpayer must meet both of the following requirements to qualify for the property tax exemption on personal property. (4-6-05)

**i.** The taxpayer's rate of charge or rate of return must not be regulated or limited by federal or state law. For example, if a corporation's rate of return is set by the Public Utilities Commission, that corporation shall not be eligible to claim the property tax exemption on any personal property it may place in service. The corporation may claim investment tax credit on the property if the property is qualified investment under Section 63-3029B, Idaho Code. Each corporation included in a unitary group shall determine whether its rate of charge or rate of return is regulated or limited by federal or state law based solely on its own activities. (4-6-05)

ii. The taxpayer must have had negative Idaho taxable income in the second preceding taxable year. (4-6-05)

b. Second Preceding Taxable Year. The term second preceding taxable year shall mean the second preceding taxable year from the taxable year in which the property is placed in service. (3-20-04)

~~e. Used Property Limitation. The term used property limitation shall mean the one hundred fifty thousand dollar (\$150,000) limitation imposed by Section 48, Internal Revenue Code of 1986 prior to November 5, 1990. (3-20-04)~~

**03. Negative Idaho Taxable Income in Second Preceding Taxable Year. (4-6-05)**

a. Net Operating Loss Carryovers and Carrybacks. Negative Idaho taxable income in the second preceding taxable year shall be determined prior to the application of any Idaho net operating loss carryforwards or carrybacks. (3-20-04)

b. Taxable year, for purposes of this calculation, includes a short taxable year as defined by the Internal Revenue Code. (3-20-04)

**c. Examples of Determining Second Preceding Taxable Year. (3-20-04)**

i. A taxpayer files income tax returns on a calendar year basis. During calendar year 2003, the taxpayer placed in service personal property that qualifies for the investment tax credit. The taxpayer's two (2) preceding taxable years were calendar years 2001 and 2002. To qualify for the property tax exemption on personal property, the taxpayer must have had negative Idaho taxable income in calendar year 2001, the second preceding taxable year from calendar year 2003. (3-20-04)

ii. A taxpayer files income tax returns on a June 30 fiscal year end basis. During the fiscal year ended June 30, 2003, the taxpayer placed in service between January 1, 2003, and June 30, 2003, personal property that qualifies for the investment tax credit. The taxpayer's two (2) preceding taxable years were fiscal years ended June 30, 2001, and June 30, 2002. To qualify for the property tax exemption, the taxpayer must have had negative Idaho taxable income in fiscal year ended June 30, 2001, the second preceding taxable year from fiscal year ended June 30, 2003. Property placed in service during the fiscal year ended June 30, 2003, but in calendar year 2002 does not qualify for the exemption. (4-6-05)

iii. Assume the same facts as in Subparagraph 719.03.c.ii., of this rule, except the taxpayer placed the property in service on September 30, 2003, during his fiscal year ended June 30, 2004. To qualify for the property tax exemption on personal property placed in service between July 1, 2003, and June 30, 2004, the taxpayer must have had negative Idaho taxable income in fiscal year ended June 30, 2002, the second preceding taxable year from the fiscal year ended June 30, 2004. (4-6-05)

iv. Assume the same facts as in Subparagraph 719.03.c.ii., of this rule, except the taxpayer's previous two (2) taxable years included a short taxable year from January 1, 2002, to June 30, 2002, and calendar year 2001. To qualify for the property tax exemption on personal property placed in service between January 1, 2003, and June 30, 2003, the taxpayer must have had negative Idaho taxable income in the taxable year for calendar year 2001, the second preceding taxable year from the fiscal year ended June 30, 2003. (4-6-05)

v. Table of examples of determining second preceding taxable year.

TAXABLE YEAR PROPERTY PLACED IN SERVICE	FIRST PRECEDING TAXABLE YEAR	SECOND PRECEDING TAXABLE YEAR
Calendar year 2003	Calendar year 2002	Calendar year 2001

<b>TAXABLE YEAR PROPERTY PLACED IN SERVICE</b>	<b>FIRST PRECEDING TAXABLE YEAR</b>	<b>SECOND PRECEDING TAXABLE YEAR</b>
Calendar year 2004	Calendar year 2003	Calendar year 2002
Calendar year 2004	Calendar year 2003	Short taxable year beginning February 1, 2002 and ending December 31, 2002
Fiscal year beginning July 1, 2002 and ending June 30, 2003	Fiscal year beginning July 1, 2001 and ending June 30, 2002	Fiscal year beginning July 1, 2000 and ending June 30, 2001
Fiscal year beginning September 1, 2003 and ending August 31, 2004	Fiscal year beginning September 1, 2002 and ending August 31, 2003	Fiscal year beginning September 1, 2001 and ending August 31, 2002
Fiscal year beginning July 1, 2002 and ending June 30, 2003	Short taxable year beginning January 1, 2002 and ending June 30, 2002	Calendar year 2001

(3-20-04)

**d. Unitary Taxpayers.** Each corporation included in a unitary combined group shall use its Idaho taxable income, as determined pursuant to Section 63-3027, Idaho Code, to determine whether it had negative Idaho taxable income in the second preceding taxable year. See Rule 365 of these rules for more information on how unitary corporations determine their Idaho taxable income. (4-6-05)

**e. Pass-Through Entities.** A taxpayer who is a partnership or an S corporation shall not qualify for the property tax exemption unless the total of its net business income apportioned to Idaho and its nonbusiness income or loss allocated to Idaho is negative for the second preceding taxable year. (3-20-04)

**f. Return Not Filed.** If a taxpayer has not filed an Idaho income tax return for the second preceding taxable year so that the loss can be verified, the taxpayer shall not be entitled to the exemption. (3-20-04)

**04. Used Property Limitation.** (3-20-04)

**a. In General.** The cost of used property that a taxpayer may take into account for any taxable year in computing qualified investment shall not exceed one hundred fifty thousand dollars (\$150,000). This includes the cost of property the taxpayer placed in service during the taxable year and also his share of the cost of property placed in service during the taxable year by a partnership, S corporation, estate or trust. Because property must be qualified investment to qualify for the property tax exemption, the taxpayer is limited to one hundred fifty thousand dollars (\$150,000) for purposes of determining the property tax exemption. (3-20-04)

**b. Selection of Items of Used Property.** If the cost of the taxpayer's used property eligible for the investment tax credit exceeds the used property limitation, the taxpayer must select the particular items of used property the cost of which is to be taken into account in computing qualified investment. When the taxpayer selects a particular item, the entire cost or the taxpayer's share of cost of the particular item must be taken into account unless the one hundred fifty thousand dollar (\$150,000) limitation is exceeded. For example, if a taxpayer places in service during the taxable year three (3) items of used property, each with a cost of sixty thousand dollars (\$60,000), the taxpayer must select the entire cost of two (2) of the items and only thirty thousand dollars (\$30,000) of the cost of the third item. The taxpayer may not select a portion of the cost of each of the three (3) items. The remaining thirty thousand dollars (\$30,000) of the third item shall not qualify for the investment tax credit nor the property tax exemption since it is not qualified investment. The selection by a taxpayer shall be made by taking the cost of the used property into account in computing the investment tax credit or the property tax exemption for a taxable year. (3-20-04)

**c. Electing Property Tax Exemption on Selected Used Property Items.** Once the taxpayer has selected the particular items of used property, the cost of which is to be taken into account in computing qualified investment, the taxpayer shall determine whether he may elect the property tax exemption on the items selected. If an item qualifies as personal property and the taxpayer had a negative Idaho taxable income in the second preceding taxable

year, the taxpayer may elect to claim the property tax exemption on the item in lieu of earning the investment tax credit. For example, assume the same facts as in Paragraph 719.04.b., of this rule. The taxpayer may elect the property tax exemption on any of the three (3) items, limited to the amount included as qualified investment if the item qualifies as personal property and the taxpayer had a negative Idaho taxable in the second preceding taxable year. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**745. CREDIT FOR QUALIFYING NEW EMPLOYEES: REVENUE-PRODUCING ENTERPRISE (RULE 745).**

Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning ~~in 2010~~ after 2009 and before ~~April 15, 2011.~~ ~~(2-27-12)~~( )

**01. In General.** A revenue-producing enterprise is defined in Section 63-3022H, Idaho Code, and Rule 172 of these rules. (4-7-11)

**02. Multiple Activities.** If a taxpayer's trade or business includes both a revenue-producing enterprise and other activities, the taxpayer must calculate qualifying new employees based on that portion of the Idaho business that qualifies as a revenue-producing enterprise. (3-30-07)

**03. Seasonal or New Business.** An individual employed in a seasonal or new business that was in operation during the taxable year for less than nine (9) months does not qualify as a new employee. (3-30-01)

**04. Unitary Taxpayers.** The activities of a taxpayer that qualify as a revenue-producing enterprise are determined separately for each corporation that is a member of the unitary group. (4-7-11)

**746. CREDIT FOR QUALIFYING NEW EMPLOYEES: CALCULATIONS USED TO DETERMINE THE CREDIT AND CREDIT CARRYOVER (RULE 746).**

Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning after 2004 and before ~~April 15, 2011.~~ ~~(2-27-12)~~( )

**01. In General.** An employer may be able to earn either a one thousand dollar (\$1,000) credit or a five hundred dollar (\$500) credit for a qualifying new employee. However, the employer cannot earn both credits for the same employee. The applicable credit rate depends on whether the new employee meets certain wage and benefit criteria. If the new employee does not meet the criteria for either credit rate, the employer may not claim the credit for such new employee. (4-7-11)

**02. Qualifying for the One Thousand Dollar (\$1,000) Credit.** (4-6-05)

**a.** The new employee must meet both of the following criteria to qualify for the one thousand dollar (\$1,000) credit: (4-6-05)

**i.** He must have received annual earnings at an average rate of fifteen dollars and fifty cents (\$15.50) or more per hour worked; and (4-6-05)

**ii.** He must have been eligible to receive employer provided coverage under an accident or health plan described in Section 105, Internal Revenue Code. (4-6-05)

**b.** The new employee does not have to be employed in a revenue-producing enterprise to qualify for the one thousand dollar (\$1,000) credit. (4-6-05)

**03. Qualifying for the Five Hundred Dollar (\$500) Credit.** If a new employee does not meet the criteria for the one thousand dollar (\$1,000) credit, the employer may be eligible to claim the five hundred dollar (\$500) credit. To qualify for the five hundred dollar (\$500) credit, the new employee must have been employed in a



revenue-producing enterprise as defined in Section 63-3029E, Idaho Code. (4-6-05)

**04. Calculating Number of Employees.** (3-30-01)

**a.** Number of Employees Clarified. Only employees who meet the qualifications set forth in Section 63-3029E(1)(a), Idaho Code, are included when computing the number of employees for a taxable year. Such requirements include the following: (3-20-04)

i. The employee must have been subject to Idaho income tax withholding. (3-20-04)

ii. The employee must have been employed by the employer on a regular full-time basis or on a part-time basis if customarily performing such duties at least twenty (20) hours per week. Leased employees do not qualify as employees of the lessee. (4-6-05)

iii. The employee must have been performing such duties for the employer for a minimum of nine (9) months during the taxable year. An individual employed in a seasonal or new business that was in operation for less than nine (9) months during the taxable year does not qualify. (4-6-05)

iv. The employee must have been covered for Idaho unemployment insurance purposes. (3-20-04)

**b.** Idaho Department of Labor Reports. The employer should begin with his Idaho Department of Labor reports to determine the number of employees. However, all employees reported on these reports do not automatically qualify for the calculation of the number of employees. (4-6-05)

**c.** Calculation. To calculate the number of employees for a taxable year, add the total qualified employees for each month and divide that sum by the number of months of operation. (3-30-01)

**05. Calculating the Number of New Employees.** (3-30-01)

**a.** The number of new employees is the increase in the number of employees for the current taxable year over the greater of the following: (3-30-01)

i. The number of employees for the prior taxable year; or (3-30-01)

ii. The average of the number of employees for the three (3) prior taxable years. (3-30-01)

**b.** In determining who qualifies to be included in the number of employees, the law applicable to the year in which the credit is being earned must be used in calculating the number of employees for the prior years. The computations of the number of employees for the prior taxable year and average for the three (3) prior taxable years must be made consistent with the computations and law applicable for the taxable year in which the credit is earned. (4-7-11)

i. For example, an employer may qualify as a revenue-producing enterprise under the law applicable to 2010, but did not qualify as a revenue-producing enterprise under the law applicable to the prior years. For purposes of calculating the five hundred dollar (\$500) credit earned in 2010, the number of employees for the prior years must be calculated using the law applicable to 2010. (4-7-11)

ii. The employer must include in the number of employees for the prior years employees who qualify under the current law, even though the employer was unable to include these employees as qualifying employees in the prior years and did not earn the credit in the prior years. (4-7-11)

**c.** The number of new employees must be rounded down to the nearest whole number and must equal or exceed one (1) or no credit is earned. (4-6-05)

**d.** The employer must determine the number of new employees who qualify for the one thousand dollar (\$1,000) credit and the number who qualify for the five hundred dollar (\$500) credit. If the new employees do not meet the criteria set forth in Sections 63-3029E and 63-3029F, Idaho Code, and this rule, the employer may not

earn the credit. For example, if a new employee has an average wage rate of ten dollars (\$10) and the employer's business does not qualify as a revenue-producing enterprise, the new employee does not qualify for either the one thousand dollar (\$1,000) credit or the five hundred dollar (\$500) credit. (4-7-11)

**06. Computing the Credit Earned.** The credit earned is the lesser of the amounts determined in Paragraphs 746.06.a. and 746.06.b. of this rule. (4-6-05)

**a.** The number of new employees who qualify for the five hundred dollars (\$500) credit multiplied by five hundred dollars (\$500), plus the number of new employees who qualify for the one thousand dollar (\$1,000) credit multiplied by one thousand dollars (\$1,000); or (4-6-05)

**b.** The net income of the trade or business, as determined pursuant to Rule 747 of these rules, multiplied by three and one-quarter percent (3.25%). (4-6-05)

**07. Limitations.** In the year the credit for qualifying new employees is earned or claimed: (3-20-04)

**a.** This credit and all other credits may not exceed fifty percent (50%) of the taxpayer's income tax for that year after deducting the credit for taxes paid to other states. The credit for taxes paid to other states is not subject to this limitation. (4-6-05)

**b.** See Section 63-3029P, Idaho Code, and Rule 799 of these rules for the priority order of credits. (4-6-05)

**08. Carryover.** (2-27-12)

**a.** To claim the carryover, the employer must maintain the employment level on which the credit was computed during the three (3) succeeding taxable years to which the unused credit is carried. If the employment level that generated the credit decreases, the employer is not required to recapture the credit claimed in previous taxable years. However, the employer must recompute the credit based on the reduced employment level to determine the correct amount of carryover. (2-27-12)

**b.** The credit may be carried forward only to taxable years beginning prior to January 1, 2011. If there is any credit remaining after application to taxable years beginning prior to January 1, 2011, any further benefit from the credit is lost. (2-27-12)

**09. Pass-Through Entities.** See Rule 785 of these rules for pass-through entities and the calculation of credits. (3-15-02)

**10. Unitary Taxpayers.** (3-30-01)

**a.** A corporation may not use the credit for qualifying new employees earned by another member of the unitary group. See Rule 365 of these rules. (3-30-01)

**b.** Each corporation in a unitary group that claims the credit for qualifying new employees is subject to Section 63-3029P, Idaho Code, and Rule 799 of these rules for the priority order of credits. (4-6-05)

**747. CREDIT FOR QUALIFYING NEW EMPLOYEES: NET INCOME OF A TRADE OR BUSINESS (RULE 747).**

Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning after 2004 and before April 15, 2011. ~~(2-27-12)~~( )

**01. Net Income From the Taxpayer's Trade or Business.** If a taxpayer is claiming the credit under Section 63-3029F, Idaho Code, the net income of the taxpayer's trade or business ~~shall~~ will be calculated as follows: ~~(3-30-07)~~( )

**a.** Proprietorships. The amount of income from Idaho activities that is reported as net profit or net loss on Schedule C or Schedule F. (3-30-01)

**b.** C Corporations. The amount of Idaho taxable income, reported on Idaho Form 41, modified to restore all net operating loss deductions, and excluding any nonbusiness income and expenses allocable to Idaho. (3-30-01)

**c.** S Corporations. The amount of Idaho taxable income reported on Idaho Form 41S, modified as follows: the deduction for income reported by shareholders on their Idaho income tax returns ~~shall~~ **must** be added back, the addition for compensation or income attributable to individual shareholders who do not report this income on Idaho income tax returns ~~shall~~ **must** be deducted, and any nonbusiness income and expenses allocable to Idaho ~~shall~~ **must** be excluded. (3-30-07)(    )

**d.** Partnerships. The amount of Idaho taxable income reported on Idaho Form 65, modified as follows: the deduction for income reported by partners on their Idaho income tax returns ~~shall~~ **must** be added back, the addition for compensation or income attributable to individual partners who do not report this income on Idaho income tax returns ~~shall~~ **must** be deducted, and any nonbusiness income and expenses allocable to Idaho ~~shall~~ **must** be excluded. (3-30-07)(    )

**02. Unitary Taxpayers.** Each corporation included in a unitary combined group ~~shall~~ **must** use its Idaho taxable income as determined pursuant to Section 63-3027, Idaho Code, modified to restore all net operating loss deductions, and excluding any nonbusiness income and expenses allocable to Idaho. (3-30-01)(    )

**748. CREDIT FOR QUALIFYING NEW EMPLOYEES: RECORD-KEEPING REQUIREMENTS (RULE 748).**

Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning after 2001 and before **April 15, 2011**. (2-27-12)(    )

**01. Information Required.** Each taxpayer must retain and make available, on request, records to document the credit earned or claimed. The records must include all of the following: (5-3-03)

**a.** The Employer Quarterly Unemployment Insurance Tax Reports and the Unemployment Insurance Wage Reports filed with the Idaho Department of Labor; (5-3-03)

**b.** Payroll records and reports documenting length of employment and hours worked; (5-3-03)

**c.** The computation of the number of qualifying new employees; (3-30-01)

**d.** The qualification as a revenue-producing enterprise; (3-30-01)

**e.** The computation of the credit; (3-30-01)

**f.** The computation of net income; (3-30-01)

**g.** The continued maintenance of adequate employment levels into carryover years; and (3-30-01)

**h.** The computation of any carryovers. (3-30-01)

**02. Failure to Maintain Adequate Records.** Failure to maintain any of the records required by this rule may result in the disallowance of the credit. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**771. GROCERY CREDIT: TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 2007 (RULE 771).** Section 63-3024A, Idaho Code. (5-8-09)

**01. Residents.** (5-8-09)

**a.** A resident individual may claim a credit for each personal exemption for which a deduction is permitted and claimed on his Idaho income tax return provided the personal exemption represents an individual who is a resident of Idaho. The maximum credit allowed per qualifying exemption is as follows:

TAX YEAR	IDAHO TAXABLE INCOME \$1,000 OR LESS	IDAHO TAXABLE INCOME MORE THAN \$1,000
<del>2012</del>	<del>\$90</del>	<del>\$70</del>
2011	\$80	\$60
2010	\$70	\$50
2009	\$60	\$40
2008	\$50	\$30

~~(2-27-12)( )~~

**b.** A resident individual claiming the credit who is age sixty-five (65) or older may claim an additional twenty dollars (\$20). An additional twenty dollar (\$20) credit may be claimed for a spouse who is age sixty-five (65) or older. The additional twenty dollar (\$20) credit may not be claimed for other dependents who are age sixty-five (65) or older. (5-8-09)

**02. Part-Year Residents.** A part-year resident is entitled to a prorated credit based on the number of months he was domiciled in Idaho during the taxable year. For purposes of this rule, a fraction of a month exceeding fifteen (15) days is treated as a full month. If the credit exceeds his tax liability, the part-year resident is not entitled to a refund. (5-8-09)

**03. Circumstances Causing Ineligibility.** A resident or part-year resident individual is not eligible for the credit for the month or part of the month for which the individual: (5-8-09)

**a.** Received assistance under the federal food stamp program; or (5-8-09)

**b.** Was incarcerated. (5-8-09)

**04. Nonresidents.** A nonresident is not entitled to the credit even though the individual may have been employed in Idaho for the entire year. (5-8-09)

**05. Illegal Residents.** An individual residing illegally in the United States is not entitled to the credit. (5-8-09)

**06. Members of the Uniformed Services.** A member of the uniformed services who is: (4-7-11)

**a.** Domiciled in Idaho is entitled to this credit; (5-8-09)

**b.** Residing in Idaho but who is a nonresident pursuant to the Servicemembers Civil Relief Act is not entitled to this credit. (5-8-09)

**c.** See Rule 032 of these rules for the definition of member of the uniformed services. (4-7-11)

**07. Spouse or Dependents of Members of the Uniformed Services.** Beginning on January 1, 2009, a spouse of a nonresident member of the uniformed services stationed in Idaho who has the same domicile as the military service member's home of record and who is residing in Idaho solely to be with the servicemember is a nonresident and is not entitled to the grocery credit. A spouse who is domiciled in Idaho is entitled to the credit. The domicile of a dependent child is presumed to be that of the nonmilitary spouse. (4-7-11)

**08. Claiming the Credit.** (5-8-09)

**a.** An individual who is required to file an Idaho individual income tax return must claim the credit on his return. If the credit exceeds his tax liability, the resident will receive a refund. (4-7-11)

**b.** An individual who is not required to file an Idaho individual income tax return must file a claim for refund of the credit on a form approved by the Tax Commission on or before April 15 following the year for which the credit relates. (4-7-11)

**c.** No credit may be refunded three (3) years after the due date of the claim for refund, including extensions, if a return was required to be filed under Section 63-3030, Idaho Code. (4-7-11)

**09. Donating the Credit.** Taxpayers may elect to donate the entire credit to the Cooperative Welfare Fund created pursuant to Section 56-401, Idaho Code. A taxpayer may not make a partial donation of the credit. The election must be made as indicated on the form on which the credit was claimed. The election is irrevocable and may not be changed on an amended return. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**810. TIME FOR FILING INCOME TAX RETURNS (RULE 810).** (3-20-97)  
Section 63-3032, Idaho Code.

**01. Due Date of Returns.** (7-1-98)

**a.** All taxpayers except farmer's cooperatives. Each taxpayer, whether a corporation, S corporation, individual, partnership, estate or trust, is required to file an income tax return with the Tax Commission on or before the fifteenth day of the fourth month following the close of the taxable year. A taxable year, for this purpose, includes a short taxable year as defined by the Internal Revenue Code. However, if the time for filing a short taxable year for federal income tax purposes is later than the fifteenth day of the fourth month following the close of the taxable year, the later date ~~shall~~ will be the date the return is required to be filed with the Tax Commission. (~~3-15-02~~)(    )

**b.** Farmer's cooperatives. Each farmers' cooperative taxable pursuant to Section 63-3025B, Idaho Code, is required to file an income tax return with the Tax Commission on or before the fifteenth day of the ninth month following the close of the taxable year. (7-1-98)

**02. Timely Filing Defined.** If the last day for filing a return falls on a Saturday, Sunday, ~~or~~ legal holiday, or a holiday recognized by the Internal Revenue Service, the return is deemed timely filed if it is filed on the next day that is not a Saturday, Sunday, or legal holiday. This rule also applies to returns falling due at the end of a period of extension granted by the Tax Commission. A legal holiday, for this purpose, is any holiday recognized by the state of Idaho, including special holidays declared by the Governor. (~~3-20-97~~)(    )

**03. Mail.** Section 63-217(1), Idaho Code, specifies that an income tax return sent through the mail is filed timely if it is postmarked on or before the due date of the return. See IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," Rule 010. (3-15-02)

**04. Fifty-Two/Fifty-Three Week Years.** A fifty-two fifty-three (52-53) week year is considered to end on the last day of the calendar month ending nearest to the last day of that taxable year. For example, the taxable year of a taxpayer with a fifty-two fifty-three (52-53) week year that ends on February 3 is considered to end on January 31. In this example the due date of the return is May 15, the fifteenth day of the fourth month following January 31. (3-20-97)

## IDAPA 35 - IDAHO STATE TAX COMMISSION

### 35.01.02 - SALES TAX ADMINISTRATIVE RULES

#### DOCKET NO. 35-0102-1201

#### 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 63-105, 63-3624, 63-3635, 63-3039, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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 following rules, as stated in the Notice Of Intent To Promulgate Rules - Negotiated Rulemaking and published in the June 6, 2012, Administrative Bulletin, are not being promulgated due to time constraints and will remain as codified: Rules 012, 027, 030, 041, 047, 051, 067, 079, 105, 129, 130, and 136.

Rule 024 is being amended to clarify that a rental of tangible personal property with an operator provided by the equipment owner will be treated as a fully operated rental regardless of whether the hired operator is an employee of the equipment owner.

Rule 037 is being amended to clarify the exemption for the purchase and use of aircraft primarily utilized in transporting freight or passengers including the definition of important terms such as common carrier and public. This Rule is also being amended to reflect statutory changes enacted in the last legislative session that exempted the sales of repair parts installed into aircraft owned by a nonresident.

Rule 043 is being amended to clarify whether certain fees or charges added onto the sale of tangible personal property, such as fuel surcharges or environmental fees, should be included in the taxable sales price.

Rule 044 is being amended to define the term "trade down."

Rule 072 is being amended to clarify the taxability of tangible personal property removed from inventory held for resale.

Rule 095 is being amended to define "money operated dispensing equipment" to include machines operated by credit or debit cards.

Rule 101 is being amended to reflect statutory changes enacted in the last legislative session that changed the period for reviewing the ongoing IRP use tax exemption.

Rule 109 is being amended to define "amusement device" to include machines operated by debit or credit card and prepaid cards.

Rule 128 is being amended to make minor technical corrections to bring the rule in line with current policy and procedure regarding exemption certificates.

**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. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 6, 2012, Idaho Administrative Bulletin, [Vol. 12-6, page 36](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact McLean Russell (208) 334-7531.

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 close of business October 24, 2012.

DATED this August 31, 2012.

McLean Russell  
Tax Policy Specialist  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7531

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0102-1201**

**024. RENTALS OR LEASES OF TANGIBLE PERSONAL PROPERTY (RULE 024).**

**01. In General.** The lease or rental of tangible personal property, including licensed motor vehicles, is a sale. (7-1-93)

**02. Bare Equipment Rental.** A bare equipment rental, that is, a rental of equipment without operator, is a taxable sale. The owner of the equipment is a retailer and must get a seller's permit and collect and remit sales taxes. The equipment owner must collect sales tax on each rental payment and remit the tax to the State Tax Commission just like any other retailer. The tax applies whether the equipment is rented by the hour, day, week, month, or on a mileage, or any other basis. The equipment owner who ~~mainly~~ **primarily** rents bare equipment may buy the equipment without paying tax to the vendor by giving him a resale certificate. See Rule 128 of these rules. If the owner uses the equipment for his own benefit or in his own business operations, he must pay use tax based on a ~~reasonable~~ **fair market** rental value for the period during which he used his own equipment. (3-15-02)( )

**03. Fully Operated Equipment Rentals.** (7-1-93)

**a.** A fully operated equipment rental, equipment with operator, is a service rather than a retail sale of tangible personal property. No sales tax is due on a fully operated equipment rental. (7-1-93)

**b.** A fully operated equipment rental is an agreement in which the owner or supplier of the equipment or property supplies ~~# the equipment or property~~ along with ~~an~~ operators ~~who are his own employees~~, and the property supplied is of no value to the customer without the ~~owner's employees~~ **operator**. (7-1-93)( )

**c.** The owner or supplier of the equipment or property used in a fully operated equipment rental is the consumer of the equipment or property, and is subject to sales or use tax when he buys or uses the equipment in Idaho. Special rules apply to transient equipment used for short periods in Idaho. See Rule 073 of these rules. (7-1-99)

d. If the equipment or property has value to the customer without ~~the owner's or supplier's employees~~ an operator, then the lease or rental of the equipment or property is a distinct transaction. It is subject to sales or use tax and its price must be stated separately from the price of the service provided by the ~~employees of the owner or supplier~~ operator. (7-1-93)(    )

e. Example: A crane rental company provides a mobile crane to a contractor, along with an operator. The contractor may not use the crane without the ~~rental company's employee~~ operator, so the leasing company is not required to charge sales tax on the lease of the crane. (7-1-93)(    )

f. Example: Pick-Up Industries provides a three (3) cubic yard trash container to a customer. Pick-Up also provides trash hauling service to empty the container. Since the container is used to store trash between collections, its transfer to a customer is a lease subject to sales tax. (7-1-93)

**04. Mixed Use of Rental Equipment.** (7-1-93)

a. If the equipment owner primarily rents bare equipment but sometimes supplies equipment with an operator, ~~he~~ the equipment owner is the consumer of the equipment while it is used by ~~his employees~~ the operator to perform ~~his a~~ service contract. Accordingly, ~~he~~ the equipment owner must pay use tax on the ~~reasonable fair market~~ rental value of the equipment for that period of time unless he paid tax when he bought the equipment. (7-1-93)(    )

b. If the equipment owner primarily rents fully operated equipment but sometimes rents bare equipment, he must charge and remit Idaho sales tax on the rental of the bare equipment. The tax applies even though the equipment owner's purchase of the property was also subject to sales or use tax. In this case, the owner purchased the equipment for a purpose other than the resale or re-rental of that property in the regular course of business. (7-1-93)

**05. Operator Required to Be Paid by Customer.** In some cases, an equipment owner supplies equipment along with an operator but a union contract or a state or federal law requires the customer to pay the operator. If all other indications of an employee-employer relationship, such as the right to hire and fire, immediate direction and control, etc., remain with the equipment owner, the owner is viewed as supplying a service and no sales tax applies to the service fee. However, the fact that the transaction is a fully operated equipment rental must be clearly stated on the face of the invoice or other billing document. The State Tax Commission may, whenever it deems appropriate, examine the facts on a case-by-case basis to determine if a true employer-employee relationship exists between the equipment owner and the operator. (7-1-99)

**06. Maintenance of Rental Equipment.** If the owner who primarily rents bare equipment is responsible for the maintenance of the equipment, he may buy the necessary repair parts and equipment tax exempt by providing his vendor with a resale certificate. The owner who rents fully operated equipment may not buy the equipment or repair parts tax exempt. (7-1-93)(    )

**07. Rentals to Exempt Entities.** The rental or lease of equipment invoiced directly to an entity exempt from sales tax, such as the state of Idaho or one (1) of its political subdivisions, is not subject to sales tax. However, if the rental or lease is to an individual or organization performing a contract for, or working for an exempt entity, the rental is taxable. (7-1-93)

**08. Exempt Equipment Rentals.** Equipment which would have been exempt from tax if purchased is also tax exempt if leased or rented. To claim this exemption, the renter must furnish the owner with a properly completed and signed exemption certificate. See Rule 128 of these rules. (3-15-02)

**09. Rental Payments Applied to Future Sales.** Rentals to be applied toward a future sale or purchase are taxable. (7-1-93)

**10. Personal Property Tax.** A lessor may require reimbursement from the lessee for the personal property tax the lessor must pay on leased equipment. A charge for personal property tax will be exempt from sales tax if the lease is for a term of one year or longer; if the property tax is billed as a separate line item; and if the charge is no more than the property tax actually paid by the lessor. (5-8-09)



**11. Out-of-State Rental/Lease.** Rental or lease payments on equipment used outside Idaho are not subject to Idaho sales tax. Rental or lease payments on equipment used in Idaho are taxable. If the equipment is delivered in Idaho, even though it will be used outside the state, then the rental or lease payment for the first month, or other period, is subject to Idaho tax. (7-1-93)

**12. Lease-Purchase and Lease with Option to Purchase.** (7-1-93)

**a.** Lease-purchase agreements include transfers which are called leases by the parties but are really installment, conditional, or similar sales. Where ownership passes to the transferee at the end of the stated terms of the lease contract with no additional consideration from the transferee, or where the additional consideration does not represent the fair market value of the property, the transaction is a sale and tax on the entire sales price is collected on the date the property is delivered. (7-1-93)

**b.** Lease with option to purchase agreements include transfers in which the personal property owner, lessor, transfers possession, dominion, control or use of the property to another for consideration over a stated term and the owner, lessor, keeps the property at the end of the term unless the lessee exercises an option to buy the property. The owner/lessor must collect sales tax from the lessee at the time the rental is charged. If the lessee exercises the option to buy, the lessor/owner must collect sales tax from the lessee/buyer on the full remaining purchase price, the residual, when the option is exercised. (7-1-93)

**13. Cross-References.** (7-1-93)

**a.** See Rule 025 of these rules on real property rental. (7-1-99)

**b.** See Rule 037 of these rules on aircraft and flying services. (7-1-99)

**c.** See Rule 038 of these rules on flying clubs. (7-1-99)

**d.** See Rule 044 of these rules on trade-in for rental or lease property. (7-1-99)

**e.** See Rule 049 of these rules on warranties and service agreements. (7-1-99)

**f.** See Rule 073 of these rules on transient equipment. (7-1-99)

**g.** See Rule 106 of these rules on motor vehicles. (7-1-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**037. AIRCRAFT AND FLYING SERVICES (RULE 037).**

[Section 63-3622GG, Idaho Code.](#)

( )

**01. Definitions.** For the purposes of this rule, the following terms have the following meanings: (7-1-94)

**a.** Recreational Flight. The hiring on demand of an aircraft with a pilot to transport passengers for a recreational purpose. Examples are a pleasure ride, sightseeing, wildlife viewing, hot air balloon rides, or other similar activities. (4-11-06)

**b.** Freight. Goods transported by a carrier between two (2) points. Freight does not include goods which are being transported for the purpose of aerial spraying or dumping. See Subsection 037.05 of this rule. (4-11-06)

**c.** Transportation of Passengers. The transportation of passengers means the service of transporting

passengers from one (1) point to another. It does not include survey flights, recreational or sightseeing flights, nor does it include any flight that begins and ends at the same point. (4-11-06)

**d.** Nonresident Individual. An individual as defined by Section 63-3014, Idaho Code. (7-1-94)

**e.** Nonresident Businesses and Other Organizations. A corporation, partnership, limited liability company, or other organization will be considered a nonresident if it is not formed under the laws of the state of Idaho, is not required to be registered to do business with the Idaho Secretary of State, does not have significant contacts with this state, and does not have consistent operations in this state. A limited liability company (LLC) or other legal entity formed by an Idaho resident under the laws of another state primarily for the purpose of purchasing and owning one (1) or more ~~airplanes or other~~ aircraft is not a nonresident. The use of an ~~airplane~~ aircraft owned by such an entity will be subject to use tax upon its first use in Idaho. (4-7-11)( )

**f.** Day. For the purpose of this rule any part of a day is a day. (7-1-94)

**g.** Transportation of freight or passengers for hire. "Transportation of freight or passengers for hire" means the business of transporting persons or property for compensation from one (1) location on the ground or water to another. ~~Such transportation must be offered indiscriminately to the general public. Entities such as LLCs or closely held corporations, that only transport related parties, including but not limited to employees or family members of the owner of the aircraft are not in the business of transporting freight or passengers for hire.~~ (3-4-10)( )

**h.** Common Carrier. The operation of an aircraft in the transportation of freight or passengers for hire by members of the public. When operating as a common carrier, the operator or owner of an aircraft usually charges a rate that will generate a profit. For flights in which federal regulations limit or minimize this profit, the aircraft is likely not operating as a common carrier. ( )

**i.** Public. The public does not include: ( )

**i.** Owners or operators of the aircraft; ( )

**ii.** Employees of the aircraft owner or operator; ( )

**iii.** Guests of the aircraft owner or operator; ( )

**iv.** Any of the above with the same relationship to a parent of the aircraft owner, a subsidiary of that parent, or a subsidiary of the aircraft owner; ( )

**v.** An individual or entity flying under a time sharing agreement which is an arrangement where an aircraft owner leases his aircraft with flight crew to another individual or entity and the aircraft owner limits the amount charged in accordance with federal regulations; or ( )

**vi.** An individual or entity flying under an interchange agreement which is an arrangement where an aircraft owner leases his aircraft to another aircraft owner in exchange for equal time on the other owner's aircraft and any fees charged may not exceed the difference between the costs of owning, operating, and maintaining the two (2) aircraft. ( )

**02. Sales of Aircraft.** Sales of aircraft are taxable unless an exemption applies. Section 63-3622GG, Idaho Code, provides an exemption for the sale, lease, purchase, or use of an aircraft: (4-11-06)

**a.** Primarily used to ~~transport~~ provide passenger\* or freight services for hire as a common carrier; (2-18-02)( )

**b.** Primarily used for emergency transportation of sick or injured persons; or (2-18-02)

**c.** Purchased for use outside this state, when the aircraft is upon delivery taken outside this state, but only if: (3-20-04)

- i. The aircraft is sold to a nonresident as defined in Subsection 037.01.d. or 037.01.e. of this rule; and (3-30-07)
- ii. The registration will be immediately changed to show the new owner and the aircraft will not be used in this state more than ninety (90) days in any consecutive twelve (12) month period. (~~3-20-04~~)( )

**03.** Sales of Aircraft Repair Parts to Nonresidents. Subject to the restrictions of Section 63-3622GG, Idaho Code, sales of aircraft repair parts are exempt from tax when installed on an aircraft owned by a nonresident individual or business as defined in Subsection 037.01 of this rule. ( )

**034.** **Federal Law Prohibits States From Taxing Sales of Air Transportation.** See 49 U.S.C. Section 40116. For this reason, sales of intrastate transportation as described by Section 63-3612(i), Idaho Code, are not taxable in Idaho. (4-11-06)

**045.** **Rentals and Leases of Aircraft.** The rental or lease of an aircraft without operator is a sale subject to sales tax, other than as provided in Subsection 037.02 of this rule. See Rule 024 of these rules. (4-11-06)

**056.** **Aerial Contracting Services.** Businesses primarily engaged in the application of agricultural chemicals as described in Federal Aviation Regulation Part 137, or in activities involving the carrying of external loads as described in Federal Aviation Regulation Part 133, such as aerial logging, are performing aerial contracting services. Such businesses are not primarily engaged in the transportation of freight. (4-11-06)

**a.** Aircraft purchased, rented, or leased for aerial contracting are subject to ~~sales~~ tax. It makes no difference whether or not the service is provided to a government agency or a private individual or company. Sales or use tax also applies to the purchase of repair parts, oil, and other tangible personal property. (~~7-1-94~~)( )

**b.** When aircraft held for resale are used by the owner, who is an aircraft dealer, for aerial contracting services, a taxable use occurs. The use tax is due on a reasonable rental value for the time the aircraft is used to provide the service. (4-11-06)

**067.** **Air Ambulance Service.** Charges for the emergency transportation of sick or injured persons, including standby time, are not subject to sales tax. (7-1-94)

**078.** **Flying Instructions.** Flying instructions or lessons which may include solo flights are a service and the fees are not subject to sales tax. (7-1-94)

**a.** Aircraft purchased, rented, or leased to be used primarily for flying instruction are subject to sales or use tax. (7-1-94)

**b.** When aircraft held for resale are used by the aircraft dealer for flying instructions or lessons, a taxable use occurs. The use tax is due on a reasonable rental value for the time the aircraft is used to provide the service. (7-1-94)

**089.** **Recreational Flights.** Sales and purchase of aircraft used primarily for providing recreational flights are subject to sales or use tax. (4-11-06)

**109.** **Aircraft Held for Resale.** Aircraft purchased and held for resale become taxable when used for purposes other than demonstration or display in the regular course of business. (7-1-94)

**a.** Rentals of aircraft held for resale are taxable as provided by Subsection 037.04 of this rule. (7-1-93)

**b.** When an aircraft held for resale is used for a taxable purpose, the dealer owes tax on that use. The use tax applies to a reasonable rental value for the time the aircraft is used. (7-1-94)

**c.** Parts and oil purchased to repair or maintain aircraft held for resale are not subject to sales tax. The

aircraft dealer must provide the supplier with a properly completed resale certificate. See Rule 128 of these rules. (2-18-02)

~~101.~~ **Fuel.** The sale or purchase of fuels subject to motor fuels tax, or on which a motor fuels tax has been paid, pursuant to Chapter 24, Title 63, Idaho Code, is exempt from sales and use tax. (7-1-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**043. SALES PRICE OR PURCHASE PRICE DEFINED (RULE 043).**

**01. Sales Price and Purchase Price.** The term sales price and purchase price may be used interchangeably. Both mean the price paid by the customer or user to the seller including: (7-1-93)

- a. The cost of transporting goods to the seller. See Rule 061 of these rules. (3-20-04)
- b. Manufacturer's or importer's excise tax. See Rule 060 of these rules. (3-20-04)
- c. Services agreed to be rendered as part of the sale. (7-1-97)
- d. Separately stated labor charges to produce or fabricate made to order goods. See Rule 029 of these rules. (3-20-04)

**02. Services Agreed to Be Rendered as a Part of the Sale.** The sales and use tax is computed on the sales price of a transaction. The term "sales price" is defined by Section 63-3613, Idaho Code, to include "services agreed to be rendered as a part of the sale." The following items are among those that are part of the sales price and, therefore, may not be deducted before computation of the sales price. This in not intended to be an exclusive list of such items: ~~(3-20-04)~~ ( )

- a. Any charges for any services to bring the subject of a sale to its finished state ready for delivery and in the condition specified by the buyer, including charges for assembly, fabrication, alteration, lubrication, engraving, monogramming, cleaning, or any other servicing, customizing or dealer preparation. (3-20-04)
- b. Any charge based on the amount or frequency of a purchase, such as a small order charge or the nature of the item sold, such as a slow-moving charge for an item not frequently sold. (3-20-04)
- c. Any commission or other form of compensation for the services of an agent, consultant, broker, or similar person. (3-20-04)
- d. Any charges for warranties, service agreements, insurance coverage, or other services required by the vendor to be taken as a condition of the sale. If the sale could be consummated without the payment of these charges, the charges are not part of the sales price if separately stated. Also see Rule 049 of these rules. (3-20-04)
- e. Any fuel surcharges except those charges which the vendor can document are related only to delivery of the property to the end customer. ( )
- f. Any environmental or disposal fee except those fees directly imposed by a governmental agency. ( )

**03. Charges Not Included.** Sales price does not include charges for interest, carrying charges, amounts charged for optional insurance on the property sold, or any financing charge. These various charges may be deducted from the total sales price if they are separately stated in the contract. In the absence of a separate statement, it will be presumed that the amount charged is part of the total sales price. (3-20-04)

**04. Gratuities.** When a gratuity is paid in addition to the price of a meal, no sales tax applies to the

gratuity. A gratuity can be paid voluntarily by the customer or be required by the seller. A gratuity is also commonly known as a tip. (3-29-12)

a. If a gratuity does not meet all of the following requirements, the gratuity will be subject to sales tax: (3-29-12)

i. A gratuity must be paid to the service provider of the meal as additional income to the base wages of the service provider; (3-29-12)

ii. A gratuity must be separately stated on the receipt or be voluntarily paid by the customer; and (3-29-12)

iii. A gratuity must not be used to avoid sales tax on the actual price of the meal. (3-29-12)

b. For the purposes of Subsection 043.04 of this rule, the following definitions apply: (3-29-12)

i. Meal. Food or drink prepared for or provided to a customer. (3-29-12)

ii. Service provider. An individual directly involved in preparing or providing a meal to a customer. This includes, but is not limited to, the server, the busser, the cook and the bartender. This does not include individuals who manage or own the company if they are not directly involved in preparing and providing a meal. (3-29-12)

**05. Service Charges.** Amounts designated as service charges, added to the price of meals or drinks, are a part of the selling price of the meals or drinks and accordingly, must be included in the purchase price subject to tax, even though such service charges are made in lieu of tips and paid over by the retailer to his employees. (7-1-93)

#### **044. TRADE-INS, TRADE-DOWNS AND BARTER (RULE 044).**

**01. Trade-Ins.** A trade-in is the amount allowed by a retailer on merchandise accepted as payment for other merchandise. Merchandise is tangible personal property which is, or becomes, part of an inventory held for resale. (7-1-93)

**02. Trade-In Allowance.** When a retailer sells merchandise from his resale inventory and lets the customer trade in other goods which the retailer places in his resale inventory, the taxable sales price of the merchandise may be reduced by the amount allowed as trade-in. ~~Example: A customer buys a car from a dealer for four thousand dollars (\$4,000). A trade-in of one thousand five hundred dollars (\$1,500) is allowed for the customer's used car. Tax is charged on two thousand five hundred dollars (\$2,500).~~ To qualify for the trade-in allowance, the property traded in must be consideration delivered by the buyer to the seller. The sales documents, executed not later than the time of sale, must identify the tangible personal property being purchased and the trade-in property being delivered to the seller. The delivery of the trade-in and the purchase must be components of a single transaction. (5-8-09)( )

**a.** ~~Example: A customer buys a car from a dealer for four thousand dollars (\$4,000). A trade-in of one thousand five hundred dollars (\$1,500) is allowed for the customer's used car. Tax is charged on two thousand five hundred dollars (\$2,500).~~ ( )

**03. Trade-Downs.** ~~A trade-down is a transaction in which a vendor accepts a trade-in from the customer that equals or exceeds the value of the merchandise sold to the customer. The taxable sales price is reduced to zero (0) and no sales tax is due on the transaction.~~ ( )

**034. Disallowed Trade-In Deductions.** Trade-in deductions are not allowed on transactions between individuals because the trade-in property does not become a part of an inventory held for resale. (3-30-01)

**a.** Example: Two (2) individuals exchange cars of equal value. No money, property, service, or consideration other than the cars are exchanged. Both parties must pay tax on the fair market value of the vehicle received in the barter. (7-1-93)

**b.** Example: Two (2) individuals, neither of whom are car dealers, exchange cars of different values. Tom's vehicle, which is worth ten thousand dollars (\$10,000), is transferred to Bill. Bill's car, which is worth eight thousand dollars (\$8,000), is transferred to Tom. Bill pays Tom two thousand dollars (\$2,000). The trade-in allowance is not applicable because neither car is merchandise. Tom pays use tax on eight thousand dollars (\$8,000); Bill pays use tax on ten thousand dollars (\$10,000). (7-1-93)

**045. Insurance Settlements.** An insurance settlement does not qualify as a trade-in. Example: Tom is involved in a car accident. His insurance company determines the damage exceeds the value of the car and settles with Tom on that basis. If Tom buys another car, he must pay sales tax on the entire sales price of the replacement car. (3-30-01)

**056. Core Charges.** Parts for cars, trucks, and other types of equipment are often sold with an added core charge. When the used core is returned, the core charge is refunded. This is essentially a trade-in of a used part for a new part. Since the seller cannot be certain that the customer will return a reusable core, such core charges are subject to sales tax. The tax on the core charge will be refunded by the seller at the time credit for the core charge is allowed. (7-1-93)

**067. Trade-In for Rental/Lease Property.** When tangible personal property is traded in as part payment for the rental or lease of other tangible personal property, sales tax applies to all payments made after the value of the trade-in property has been depleted and the lessor actually begins charging for the lease or rental. The methods of applying the trade-in value to the lease are: (7-1-93)

**a.** The trade-in value may be subtracted from the value of the leased or rented property, thereby reducing the monthly payments and the sales tax due on those payments. (7-1-93)

**b.** The trade-in value may be subtracted from the initial lease payments, with no sales tax due on those payments until it is used up. (7-1-93)

**c.** A combination of the two (2) methods, above. (7-1-93)

**d.** Example, a lessor leases a car for thirty-six (36) months at two hundred fifty dollars (\$250) per month. The value on which the lease payments are based is ten thousand dollars (\$10,000). The customer trades in a car worth two thousand dollars (\$2,000). (3-30-01)

**i.** Alternative 1: The customer and lessor agree to reduce the value on which the lease is based by two thousand dollars (\$2,000) and reduce the payments to only two hundred dollars (\$200) per month for thirty-six (36) months. Sales tax is due on each two hundred dollar (\$200) payment. (3-30-01)

**ii.** Alternative 2: The customer and lessor agree to apply the two thousand dollar (\$2,000) trade-in allowance against the two hundred fifty dollar (\$250) per month payments for the first eight (8) months of the lease. Sales tax is not due until the trade-in value is used up and the lessee is required to begin making monthly payments. (3-30-01)

**iii.** Alternative 3: The customer and lessor agree to combine the two methods and apply one thousand dollars (\$1,000) against the value on which the lease is based and use the remaining one thousand dollars (\$1,000) against the monthly payments, reducing the sales tax liability accordingly. (3-30-01)

**078. Rental/Lease Property Traded-In.** When a person disposes of tangible personal property that is leased and assigns his right to purchase the leased property to the retailer, no trade-in allowance is given for the amount of the residual buyout paid by the retailer. However, if the residual buyout amount which the lessee would pay to purchase the property is less than the amount that would be allowed by the retailer as a trade-in if the lessee had actually owned the vehicle, then the sales price subject to tax may be reduced by the difference between the total trade-in amount and residual buyout. (3-30-01)

**a.** Example: A person is the lessee of an automobile. Near the end of the lease term, the lessee enters into an agreement to purchase a new vehicle from an automobile dealer. The residual buyout amount for the leased

vehicle is ten thousand dollars (\$10,000). The retailer would allow nine thousand dollars (\$9,000) as a trade-in amount if the lessee actually owned the vehicle. Since the amount the automobile dealer is willing to allow as a trade-in is not greater than the residual buyout amount, there is no reduction in the sales price subject to sales tax.

(3-30-01)

**b.** Example: A lessee trades in his leased automobile for a new vehicle. The residual amount is ten thousand dollars (\$10,000). The automobile dealer allows twelve thousand dollars (\$12,000) as a trade. In this case, the sales price of the new vehicle is reduced by the difference between the residual amount and the total trade-in, or two thousand dollars (\$2,000).

(3-30-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**072. APPLICATION AND PAYMENT OF USE TAX (RULE 072).**

**01. Imposition of Use Tax.** Use tax is imposed upon the privilege of using, storing, or otherwise consuming tangible personal property within Idaho. The tax is imposed on the value of the tangible personal property. A recent sales price is presumptive evidence of the value. In the absence of a recent sales price, the value of the property subject to the use tax will be the fair market value at the time of first use in Idaho. Special rules apply to transient equipment which is present in Idaho ninety (90) days or less in any consecutive twelve (12) months. See Section 63-3621A, Idaho Code.

(7-1-93)

**02. Use.** Use is the exercise of right or power over tangible personal property incident to either ownership of the property or the performance of a contract. The term "use" does not include use of tangible personal property incident to the performance of a contract if the owner of the tangible personal property is a business primarily engaged in producing tangible personal property for resale and the property is exempt under Section 63-3622D, Idaho Code. See Rules 012, 077, and 079 of these rules.

(3-15-02)

**03. Storage.** Storage is any keeping or retention of tangible personal property in this state, except as inventory for the purpose of sale in the regular course of business or for subsequent use solely outside Idaho.

(7-1-93)

**04. Specifically Excluded from the Definition of Both Use and Storage Are:** (7-1-93)

**a.** Retention or use of property for subsequent transportation outside the state; or (7-1-93)

**b.** Processing, fabricating, repairing, or manufacturing property for subsequent transportation and use or resale solely outside the state. (7-1-93)

**05. Receipt Showing Sales Tax Paid.** If the property is purchased from an Idaho retailer and Idaho sales tax is charged by and remitted to the retailer, then no use tax will apply to the property. A purchase order issued by the purchaser advising the retailer to charge or include the Idaho sales tax is not sufficient evidence that the tax has been paid. The retailer's receipt provided to the purchaser must display separate statement of the tax to relieve the purchaser of the use tax requirements. (6-23-94)

**06. Out-of-State Purchases.** If the property is purchased outside the state or from a retailer not subject to the Commission's jurisdiction and is subsequently used, stored, or otherwise consumed in this state, then a use tax will apply. The purchaser must report and remit the use tax directly to the state by filing a use tax return on the forms prescribed by the Commission. (6-23-94)

**07. Taxes Paid to Another State.** The taxpayer may offset from the use taxes payable to Idaho any amount of general sales or use taxes paid to another state on the purchase or use of the same property if paid by the same taxpayer. A credit may not be claimed for taxes erroneously paid to another state if no taxable sale or use under the laws of that state occurred. In determining whether a tax is due in the state where paid, the Commission will be bound by the laws, rules, and administrative rulings of the state to which tax is paid. (7-1-93)

**a.** If the amount of tax levied by the state to which it is paid is less than the amount of the Idaho tax due, then the balance must be paid as Idaho tax. (6-23-94)

**b.** If the amount of tax levied by the state to which it is paid is equal to or greater than the Idaho tax, then there will be no taxes due to Idaho in regard to the same transaction or subsequent use of the property. (6-23-94)

**c.** If the taxes paid to the other state are greater than the Idaho tax, the amount of offset available is limited to the amount of Idaho tax due on the same transaction or use of the property. (6-23-94)

**08. Use Undeterminable at Time of Purchase.** In some cases a purchaser may be unable to determine at the time of purchase whether or not property purchased by him will be used for a taxable or nontaxable purpose. For example, a purchaser engaged in both a retailing and contracting business may not know whether an item will be sold at retail or withdrawn from inventory and used in the course of performing a contract to improve real property. In these circumstances the purchaser may purchase the goods without paying tax if he presents the documentation required by Rule 128 of these rules. The purchaser must maintain adequate accounting control to insure that use tax is properly accrued on all property subject to tax. (3-15-02)

**09. Removal from This State.** If property is held in this state solely for the purpose of subsequent transport and use outside Idaho or is to be processed, fabricated, attached to, or incorporated into property that is to be transported outside and used or sold outside the state, a use tax will not apply. (7-1-93)

**10. Tangible Personal Property Removed From Inventory.** A retailer or wholesaler may purchase tangible personal property for resale without paying sales tax. The tangible personal property then becomes part of inventory. The retailer or wholesaler may use inventory in displaying or demonstrating the inventory for purposes of selling the inventory in the normal course of business. If the retailer or wholesaler uses inventory for any purpose besides display or demonstration in the normal course of selling that inventory, the retailer or wholesaler owes use tax. If inventory is consumed during such display or demonstration, the retailer or wholesaler owes use tax. The retailer or wholesaler must calculate the use tax on the value of the tangible personal property. Use tax does not apply to any use or consumption of tangible personal property where such use is specifically exempted from use tax by Idaho Code. ( )

**a.** Inventory held for resale becomes subject to use tax at the time the retailer or wholesaler removes the tangible personal property from inventory. If a retailer or wholesaler removes tangible personal property from inventory and then performs additional manufacturing or processing labor, the retailer or wholesaler should calculate use tax on the acquisition cost before the additional labor. However, if a retailer or wholesaler removes tangible personal property after performing additional manufacturing or processing labor, the retailer or wholesaler must calculate use tax on the total inventoried cost including the additional labor. ( )

**b.** Example 1. A sawmill withdraws lumber from its resale inventory and uses it to construct a building. The lumber was not identified for this use until it was taken from inventory held for resale. Use tax is due on the manufactured value of the lumber taken from inventory. (7-1-93)

**c.** Example 2. A sawmill cuts specific trees from its own land. The sawmill then cuts these trees to specific dimensions and uses the beams and lumber to construct a building. The trees and lumber are identified for use in constructing the building from the time the trees are cut. Use tax is due on the stumpage value of the trees. (7-1-93)

**d.** Example 3. A retailer purchases shirts without paying tax for his resale inventory. The shirts cost the retailer ten dollars (\$10) each. He withdraws ten (10) of the shirts from inventory and donates them to a sports team he is sponsoring. The retailer owes use tax on one hundred dollars (\$100). (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**



095. MONEY-OPERATED DISPENSING EQUIPMENT (RULE 095).

01. **Money-Operated Dispensing Equipment.** ~~Effective July 1, 1990,~~ The sale, purchase, lease, or rental of money-operated dispensing equipment is exempt from tax if the equipment is only used to dispense a tangible product, amusement, or service on which a retail sales tax is imposed by the state of Idaho. ~~(7-1-93)~~( )

a. Money-operated dispensing equipment includes equipment operated by a debit or credit card. ( )

02. **Parts, Kits, or Supplies.** This exemption does not apply to parts, kits, or supplies used to repair, refurbish, or upgrade the dispensing equipment. Refer to Section 63-3622II, Idaho Code. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

101. MOTOR VEHICLES AND TRAILERS USED IN INTERSTATE COMMERCE (RULE 101).

01. **In General.** An exemption is provided from the sales and use tax for the sale or lease of motor vehicles and trailers ~~sold or leased~~ to commercial or private carriers to be substantially used in interstate commerce. This exemption is commonly called the IRP Exemption. Commercial or private carriers ~~shall include~~ are in the business of transporting ~~of~~ persons or commodities owned by the carrier or another, ~~but shall not include~~ Farm vehicles or noncommercial vehicles as defined by Section 49-123, Idaho Code, do not meet the requirements of the IRP exemption. ~~(3-30-07)~~( )

02. **Motor Vehicles.** ~~As~~ To qualify for the exemption, ~~is provided from the sales and use tax for motor vehicles sold or leased to~~ a purchaser ~~who will~~ must: ~~(7-1-93)~~( )

a. Immediately register the vehicle with a maximum gross weight of over twenty-six thousand (26,000) pounds; (4-6-05)

b. Register the vehicle under the International Registration Plan (IRP), ~~or other similar proportional or pro rata registration plan;~~ and ~~(4-6-05)~~( )

c. Operate the vehicle in a fleet of vehicles under the International Registration Plan (IRP) with a minimum of ten percent (10%) of the fleet miles operated outside the state of Idaho ~~in any registration period under the international registration plan.~~ ~~(4-6-05)~~( )

03. **Trailers.** An exemption is provided from the sales or use tax for trailers when the purchaser will: (7-1-93)

a. Immediately place the trailer in a fleet of vehicles registered under the International Registration Plan (IRP), ~~or other similar proportional or pro rata registration plan;~~ and ~~(4-6-05)~~( )

b. The trailer will be part of a fleet of vehicles with a minimum of ten percent (10%) of the fleet miles operated outside the state of Idaho ~~in any registration period~~ under the International Registration Plan ~~(IRP) or other similar plan.~~ ~~(3-30-07)~~( )

04. **Title or Base Plate.** The exemption applies whether the motor vehicles and trailers are titled or base plated in Idaho or another state or nation. (7-1-93)

05. **Documentation.** Purchasers claiming this exemption must provide the seller or lessor with a properly completed Form ST-104-MV, Sales Tax Exemption Certificate-Vehicle. When a vehicle qualifying for this exemption is purchased from a retailer who is not registered to collect Idaho sales tax, the Form ST-104-MV must be completed by the purchaser and provided to the county assessor or Department of Transportation when titling or registering the vehicle in Idaho. (7-1-93)

06. **Repair Parts and Supplies.** The exemption does not apply to parts, supplies, or other tangible personal property purchased by persons engaged in interstate commerce. Purchases of glider kits as defined by Section 49-123, Idaho Code, will qualify if they are assembled into glider kit vehicles that will be immediately registered under the International Registration Plan ~~(IRP) or other similar plan.~~ (3-30-07)( )

07. **Failure To Meet Interstate Mileage Requirement.** The use of a fleet of trucks and trailers, purchased exempt under the IRP exemption provided by Section 63-3622R, Idaho Code, will become taxable ~~at the end of any registration period for~~ as of June 30 of any year in which the fleet's out-of-state mileage is less than ten percent (10%) of the total fleet mileage during the previous four (4) quarters. (5-8-09)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**109. AMUSEMENT DEVICES (RULE 109).**

01. ~~Currency-Operated~~ **Amusement Devices.** "Amusement device" means ~~all coin, currency, debit card, credit card, prepaid arcade card,~~ or token operated machines and devices used for amusement or entertainment. This definition includes, but is not limited to, game machines; pool tables; jukeboxes; electronic games; video or cinematic viewing devices; crane, rotary, and pusher machines; and similar devices. It does not include vending machines that are used to sell tangible personal property or ~~noncurrency-operated~~ other machines or games described in Subsection 109.03 of this rule. (6-30-95)( )

02. **Requirement to Obtain Permit.** The owner or operator of amusement devices ~~is required to must~~ obtain a seller's permit if ~~he is making~~ the owner or operator makes retail sales other than the use of ~~currency or token operated~~ amusement devices. If the owner or operator ~~is not making~~ does not make such other retail sales, ~~he the owner or operator~~ need not obtain a seller's permit, but must obtain an amusement device permit for each amusement device in service. (6-30-95)( )

a. Owners and operators of ~~coin or currency-operated~~ amusement devices ~~are required to must~~ pay a permit fee for every such amusement device in operation. Section 63-3623B(c), Idaho Code, states that the fee may be increased proportionately to any increase in the tax rate. The formula to calculate the permit fee is seven hundred dollars (\$700) x tax rate. For example, at a tax rate of five percent (5%) the amount of the permit fee is seven hundred dollars (\$700) x five percent (5%) = thirty-five dollars (\$35). If the tax rate is six percent (6%), the permit fee will be forty-two dollars (\$42). If any change in the tax rate becomes effective on July 1 of a given year, the charge for the permit fee will change proportionately on that date also. If a change in the tax rate occurs on a day other than July 1, the permit fee will be changed on the next July 1 following the change in the tax rate. (3-29-12)( )

b. Upon receiving the appropriate payment, the Tax Commission will issue to the owner or operator of one (1) or more amusement devices, a permit for each such amusement device in service. ~~A~~ The owner or operator must affix a separate permit on each amusement device in service ~~is required~~. The permit ~~shall~~ must be affixed to the machine in such a manner that it is easily visible. Permits are transferable from one person to another after written notice of the transfer is received and acknowledged by the Tax Commission. Permits may be transferred from an amusement device that is no longer in service to another amusement device owned or operated by the same person. An amusement device permit is not valid unless the name and business address of the owner or operator is typed or printed in black ink on the face of the permit. (3-29-12)( )

c. Video amusement devices may have more than one (1) monitor and be designed to be operated independently by more than one (1) person. In such cases a separate permit is required for each monitor. (6-30-95)

d. Amusement device permits must be renewed annually. Annual permits are valid from July 1 through June 30. Permits must be renewed on or before July 1 by the owner or operator of the amusement devices. Amusement devices acquired after July 1 or placed in service before the next July 1 will require the appropriate fee for a full-year permit. (3-16-04)

e. If an amusement device permit is lost, stolen, or destroyed, an amusement device permit for the current year must still be affixed to every operating amusement device. This may require the purchase of a new permit. The Tax Commission will not issue free replacement amusement device permits regardless of the reason for the loss of the permit. (3-29-12)

03. ~~Noncoin-Operated~~ **Other Amusement Machines or Games.** Charges for the use of ~~amusement machines or games which are not currency or token operated~~ do not meet the definition in Subsection 109.01 are subject to tax at the prevailing rate times one hundred percent (100%) of the gross proceeds received for the use of the device. This applies regardless of the method the owner or operator uses to determine the charge, such as by the hour or by the game. The owner or operator of ~~noncurrency or nontoken operated~~ such amusement machines or games ~~is required to~~ must obtain a seller's permit if ~~he is charging~~ the owner or operator charges for the use of such machines. (6-30-95)(    )

04. **Cross-Reference.** See Rule 095 of these rules regarding purchases of Money-Operated Dispensing Equipment. (3-16-04)

**(BREAK IN CONTINUITY OF SECTIONS)**

**128. CERTIFICATES FOR RESALE AND OTHER EXEMPTION CLAIMS (RULE 128).**

01. **In General.** This rule applies to proper documentation for exempt purchases of tangible personal property for resale and all other exemption claims for taxable transactions enumerated in Section 63-3612, Idaho Code. All forms approved by this rule may be reproduced. (3-6-00)

02. **Burden of Proof.** All sales made within Idaho are presumed to be subject to sales tax unless the seller obtains from the purchaser a properly executed resale or exemption certificate. If the seller does not have an exemption certificate on file it will have the burden of proving that a sale is not subject to tax. The seller may overcome the presumption by establishing the facts giving rise to the exemption. If the seller obtains a valid certificate from the purchaser, the seller need not collect sales or use taxes unless the sale of the tangible personal property or the transaction in question is taxable to the purchaser as a matter of law in the particular instance claimed on the certificate. (3-4-10)

03. **Qualified Buyers for Purposes Other Than Resale.** Producers, certain contractors and exempt buyers may claim an exemption from paying sales tax on the purchase of goods and other taxable transactions by qualifying under one (1) or more of the provisions of Sections 63-3622A through 63-3622UU, Idaho Code, completing, and providing the required form to the seller. (3-4-10)

04. **Qualified Buyers for Purposes of Resale.** The resale exemption may be claimed by the following purchasers when buying goods for resale: (3-6-00)

a. A retailer or wholesaler doing business in Idaho who holds a ~~an~~ current and valid Idaho seller's permit number. ~~An Idaho seller's permit number has nine (9) digits followed by an "S." Example: 000123456-S. If the number contains any other letter or is an inappropriate number, such as a Federal Employer Identification Number, the certificate is not valid.~~ (3-6-00)(    )

b. A wholesaler who makes no retail sales and who is not required to hold an Idaho seller's permit number. (3-6-00)

c. An out-of-state retailer who makes not more than two (2) sales in Idaho in any twelve (12) month period and is not required to hold an Idaho seller's permit number. (3-6-00)

05. **Description and Proper Execution of Approved Forms.** In order to be valid, all forms must be legible and include a date, the purchaser's name, signature, title, and address. If the purchaser has a federally issued Employer Identification Number (EIN), the purchaser must also include that EIN on the form. If the purchaser does

not have an EIN, the form must contain the purchaser's driver's license number and the state of issue. The purchaser must comply with any additional requirements provided in these rules. ~~(3-4-10)~~( )

**a.** To claim a resale exemption, Form ST-101, Sales Tax Resale and Exemption Certificate, must be completed, except that multi-state taxpayers may use the Uniform Sales and Use Tax Certificate - Multi-jurisdiction. The resale certificates approved by this rule may only be taken from a purchaser described in Subsection 128.04. The reason for, and the nature of, the claimed exemption must be included on the form as well as the primary nature of business and the type of products sold, leased or rented by the purchaser. An Idaho registered retailer must include ~~a~~ its seller's permit number. A purchaser need not identify every type of product it sells but must indicate the general character of the property it sells, rents or leases. ~~(3-4-10)~~( )

**i.** Example. A grocery store that in addition to groceries sells miscellaneous items such as cosmetics, magazines, and school supplies. The store would provide its resale number and describe the primary nature of its business as selling groceries. It could buy cosmetics, magazines, and school supplies for resale and it does not need to list those items on the resale certificate. It only needs to indicate the general character of the property it sells as groceries. (3-4-10)

**ii.** Example. A lawn and garden store occasionally sells ~~bar-b-que~~ barbecue grills as promotional items. Even though it describes lawn and garden items as the types of products it sells, it can buy the grills for resale. ~~(3-4-10)~~( )

**iii.** Example. A grocery store describes the primary nature of its business as selling groceries. It then buys an automobile for resale. The grocery store should provide the automobile seller a resale certificate for this transaction and identify its primary nature of its business as grocery and indicate it is specifically buying the automobile for resale. (3-4-10)

**b.** Retailers of food products who have been granted records reduction authority by the State Tax Commission may accept Sales Tax Exemption Claim Form-Grocer, Form ST-111, from a purchaser if the retailer has a properly executed certificate (Form ST-101, ST-103, or ST-104) on file from the purchaser. Form ST-111 must include the seller's permit number (if applicable), the signature of the individual claiming the exemption, and, the total purchase price and general nature of the nontaxable products sold. (3-6-00)

**c.** Sales Tax Exemption Claim for Cash Purchases by Governmental Agencies, Form ST-104G, may be completed only by federal, Idaho State, and local government agencies making cash purchases and must be furnished to the vendor at the time of sale. Each transaction requires a newly executed form signed by the agency's purchasing agent and the employee/purchaser. Blank forms will be furnished to government agencies by the State Tax Commission upon request. The form cannot be used for lodging and meals bought by a traveling government employee nor for any other reasons enumerated on the form. (3-6-00)

**d.** Sales Tax Exemption on Lodging Accommodations Claimed by Government Employees Using Credit Card Payment, Form ST-104-HM, applies when a credit card company will directly bill to and be paid by a federal, Idaho State, or local government agency employer. It does not apply to credit card payments that are paid by the employee who is later reimbursed by the government agency employer. Each lodging transaction requires a newly executed form signed by the employee/purchaser. (3-6-00)

**e.** The Diplomatic Tax Exemption Program of the United States Government grants immunity from state taxes to diplomats from certain foreign countries. A federal tax exemption card issued by the U.S. Department of State bears a photograph of the holder, a federal tax exemption number, and specific instructions as to the extent of the exemption granted to the diplomat. Additional information is provided in Rule 098 of these rules. (3-6-00)

**f.** Sales Tax Exemption Certificate - Vehicle, Form ST-104-MV, must be completed by a purchaser claiming an exemption from tax under Section 63-3622R, Idaho Code, when purchasing a qualifying motor vehicle or trailer. (3-6-00)

**g.** Motor Vehicle Transfer Affidavit, Form ST-133, must be completed when claiming an exemption from tax when selling a motor vehicle to a relative under the exemption provided by Section 63-3622K, Idaho Code, when selling a motor vehicle, boat or RV to a member of an American Indian Tribe within the boundaries of an

American Indian reservation, or when making a gift of a motor vehicle, boat or RV.

~~(3-6-00)~~( )

**h.** Truck Camper, Transport Trailer, Office Trailer and Untitled Boat Certificate, Form ST-108, is required by any person titling, registering, or licensing certain vehicles on which sales tax was not paid. Of those vehicles mentioned on the form, only the sale of a transport trailer or an office trailer may qualify for an occasional sale exemption, as described in Rule 099 of these rules, and the exemption requires the proper execution of ST-108 to make the claim. (3-15-02)

**i.** Sales Tax Exemption Certificate - Capital Asset Transfer Affidavit, Form ST-133CATS, is required under the provisions of Section 63-3622K, Idaho Code, when claiming an exemption from tax on the sale of certain vehicles which are included in the bulk sale of a business' assets when the new owner will continue to operate the business in a like manner; for qualifying transfers of certain capital assets through sale, lease or rental; and, for the transfer of vehicles to and from a business or between qualifying businesses when there is no change other than owners' equity. (3-6-00)

**j.** Information on the resale certificate. The resale certificate shall bear the name and address of the purchaser, the name and address of the seller, shall be signed and dated by the purchaser or his agent, shall indicate the number of the permit issued to the purchaser, or that the purchaser is an out-of-state retailer, and shall indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. By executing the resale certificate, the buyer is certifying that the specific property being purchased is being purchased for resale. (3-4-10)

**06. Seller's Responsibility -- Purchases for Resale.** A seller is not liable for the collection of sales tax on items sold to a customer from whom the seller has obtained a properly executed Sales Tax Resale and Exemption Certificate, Form ST-101, if the customer intends to resell the items in the regular course of business. The seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented unless the sale fits into the narrow classification of sales that can be considered to be taxable as a matter of law in the particular instance claimed on the resale certificate. If the particular item being purchased for resale does not commonly match the description of the general character of the tangible personal property as identified on the resale certificate, then it is presumed that the sale is taxable as a matter of law; however, if the seller questions the purchaser and the purchaser provides a new certificate specifically identifying the property in question as being purchased for resale, then the seller can accept the certificate and is relieved of any further responsibility. (3-4-10)

**a.** Example: A restaurant operator completes an ST-101 for his supplier. He indicates the general character of the products he sells as food and beverages. The restaurant operator purchases sugar and flour from the supplier. The supplier is not liable for the collection of the sales tax as the character of the goods is that which the restaurant operator will resell in the regular course of business. The resale claim made by the restaurant operator is available as a matter of law. (3-6-00)

**b.** Example: The same restaurant operator later purchases dish towels and dish washing soap. The supplier must collect the tax. The general character of the goods are not those sold by a restaurant in the normal course of business. The exemption claimed by the restaurant is not available as a matter of law. However, if the restaurant operator identifies cleaning supplies as one of the types of items it resells, either on the original certificate or on a new certificate, then the supplier need not collect the tax. (3-4-10)

**c.** Example: An appliance store buys appliances and some furniture for resale from a supplier. The appliance store has a resale certificate on file with the supplier. The supplier also sells warehouse equipment as part of its business. The appliance store buys a forklift from the supplier. The supplier should charge tax. However, if the furniture store provides a new certificate indicating it will sell the forklift, the supplier has no duty or obligation to collect the tax. Without the new certificate, an objectively reasonable person would not assume a furniture store sells forklifts. Additionally, the furniture store is only buying one (1) forklift and this fact indicates to the supplier that it is not buying the forklift for resale. (3-4-10)

**07. Seller's Responsibility -- Purchases Claimed Exempt from Sales Tax for Reasons Other Than Resale.** A seller is not liable for the collection of sales tax on items sold to a customer from whom a properly executed Sales Tax Resale and Exemption Certificate, Form ST-101, has been received if the nature of the exemption claimed is available to the purchaser as a matter of law or the nature of the goods purchased qualify for the particular

exemption claimed on the certificate. (3-4-10)

**a.** A retailer must collect tax on the sale of any goods that are specifically excluded from an exemption as a matter of law. For example, a purchaser claiming the production exemption provided by Section 63-3622D, Idaho Code, may not claim an exemption on the sale of items that are specifically excluded from the exemption as a matter of law, such as: (3-6-00)

- i. Hand tools with a unit price not in excess of one hundred dollars (\$100); (3-6-00)
- ii. Maintenance and janitorial equipment and supplies; (3-6-00)
- iii. Office equipment and supplies; (3-6-00)
- iv. Selling and distribution equipment and supplies; (3-6-00)
- v. Property used in transportation activities; (3-6-00)
- vi. Equipment or other property used to make repairs; (3-6-00)
- vii. Tangible personal property which becomes a component of any real property or any improvement or fixture thereto; (3-6-00)
- viii. Licensed motor vehicles; (3-6-00)
- ix. Aircraft; and (3-6-00)
- x. Recreational vehicles. (3-6-00)

**b.** Example: A farmer completes an ST-101 claiming a production exemption on the purchase of a fifteen dollar (\$15) hammer and a case of motor oil. The retailer must collect the sales tax on the sale of the hammer, but is not liable for the collection of the sales tax on the sale of the motor oil. The retailer cannot rely on the exemption certificate when selling the hammer because, as a matter of law, the sale of hand tools with a unit price of one hundred dollars (\$100) or less is excluded from the production exemption. But the retailer can rely on the exemption certificate when selling goods, such as the motor oil, which the farmer could put to either a nontaxable use (e.g., oil for a tractor), or a taxable use (e.g., oil for a licensed pickup truck). (4-11-06)

**c.** Additionally, when a retailer sells merchandise which qualifies for the production exemption in Section 63-3622D, Idaho Code, and which may be used for either a taxable or a nontaxable purpose, such as the sale of a battery which is taxable when used in a car and not taxable when used in a farm tractor, the retailer is relieved of the liability for and responsibility of collecting the sales tax if the purchaser provides a description on the exemption certificate of the intended nontaxable use of the item. (3-6-00)

**d.** A retailer cannot rely on an exemption certificate obtained from a purchaser when the law does not provide an exemption from the tax for the purchaser, such as a nonprofit organization not specifically exempted by the sales tax law or a governmental agency of another state. (3-6-00)

**e.** Nor can a retailer rely on an exemption certificate when the limited language of the law pertaining to the exemption claimed excludes all but certain goods from the exemption. For example, certain contractors can execute an ST-101 to purchase construction materials for specific jobs in non-taxing states claiming an exemption from tax under Section 63-3622B, Idaho Code, and Rule 012 of these rules. The retailer must collect tax on any goods that are not to be incorporated into the real property, such as parts for construction equipment and tools. (3-6-00)

**f.** In lieu of Form ST-101, retailers, when selling property that the purchaser claims is entitled to the production exemption, may stamp or imprint on the face of their sales invoices, or purchasers may stamp or imprint on the face of their purchase orders, a certificate containing the following language: (3-4-10)

I certify that the property which I have here purchased will be used by me directly and primarily in the

process of producing tangible personal property by mining, manufacturing, processing, fabricating, or farming, or as a repair part for equipment used primarily as described above.

This tax exemption statement qualifies if this statement is signed by the purchaser and the name, address, and nature of business of the purchaser is shown on the invoice.

Any person who signs this certification with the intention of evading payment of tax is guilty of a misdemeanor.

\_\_\_\_\_  
NATURE OF BUSINESS

\_\_\_\_\_  
BUYER'S SIGNATURE

The signature on this certificate must be in addition to any other signature required on the invoice. If no Form ST-101 is on file with the vendor, then each exempt sale must be documented as described in this Subsection.

(3-4-10)

**g.** Information on the exemption certificate. An exemption certificate shall show the purchaser's name and address, business name and address, and be signed and dated by the purchaser. The purchaser shall also provide on the certificate the specific exemption being claimed and, if the production exemption is being claimed, a list of the products the purchaser produces. If the purchaser is claiming the contractor exemption, the purchaser must identify the invoice, purchase order, or job number to which the claim applies, the city and state where the job is located, and the name of the project owner. If the purchaser is claiming an exemption as an American Indian, then the purchaser must provide a valid Tribal I.D. number. By signing the exemption certificate, the ~~buyer~~ purchaser is certifying that the purchase qualifies for an exemption from tax. (3-4-10)(    )

**08. Purchaser's Responsibility.** A purchaser has the responsibility to properly complete a certificate and ensure that tax is charged on all taxable purchases. If the purchaser properly provides a certificate and normally makes exempt purchases, he nevertheless must ensure that tax is paid when a taxable purchase is made. If the seller does not charge the tax on a taxable purchase the purchaser must either notify the seller to correct the billing and then pay the sales tax to the seller, or accrue and remit use tax on the transaction. If the purchaser intentionally or repeatedly makes purchases, claiming they are exempt, when in fact they are not exempt, and the purchaser fails to remit use tax, a penalty can be imposed in addition to the use tax. The penalty amount that may be asserted against the purchaser is five percent (5%) of the sales price or two hundred dollars (\$200), whichever is greater. The penalty will be asserted by the Commission as a Notice of Deficiency but the purchaser may have the penalty abated when he can establish that there were reasonable grounds for believing that the purchase was properly exempt from tax. In addition, if the purchaser gives a resale or exemption certificate with the intention of evading payment of the tax, the purchaser may be charged with a criminal misdemeanor and could be punished by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for not more than one (1) year, or by both a fine and imprisonment. (3-4-10)

**a.** Example: A garden supply store sells, among other things, soil and wood chips in large quantities. It buys a loader to use in its business to load items into customers' trucks. When buying the loader, the garden supply store gives a resale certificate to the seller indicating it intends to resell the loader. However, upon purchase the loader is capitalized on the books of the garden supply store. The Commission could impose a penalty equal to five percent (5%) of the purchase price of the loader against the garden supply store. This penalty is in addition to the use tax that is due. The individual who executed the certificate, or authorized the execution, on behalf of the garden supply store, if done with intent to evade payment of the use tax, could be criminally charged with a misdemeanor. (3-4-10)

**b.** Example: A restaurant buys food for resale from a supplier. It can properly give a resale certificate to the supplier. Since it buys food on a continuing basis the supplier keeps a certificate on file. If the restaurant buys cleaning supplies for its own consumption, the supplier should charge sales tax. If it fails to charge tax, the restaurant should notify the supplier to correct the billing and collect the sales tax. If the restaurant fails to pay sales or use tax on more than one purchase, then, under Section 63-3624, Idaho Code, the Commission can assert a use tax and a penalty equal to five percent (5%) of the purchase price or two hundred dollars (\$200), whichever is greater, against the restaurant. (3-4-10)

**09. Timely Acceptance of Certificates.** A seller may accept a certificate from a purchaser prior to the time of sale, at the time of sale, or at any reasonable time after the sale to establish the exemption claim, with the exception of Forms ST-104-HM and ST-104G which must be provided at the time of sale. However, if no approved certificate is obtained from the purchaser in the manner provided or permitted by this rule, the sale is presumed to be taxable. (3-6-00)

**a.** Certificates obtained by a seller at a time subsequent to, but not within a reasonable time after, the time of sale will be considered by the State Tax Commission in conjunction with all other evidence available to determine whether or not the seller has established that a sales tax transaction is exempt from tax. (3-4-10)

**b.** Example: A retailer sells goods to a customer without charging the sales tax but does not obtain an ST-101 from the customer. Instead, the customer writes his seller's permit number on the invoice when he signs for the goods. The retailer is later audited by the State Tax Commission and fails in an attempt to obtain a certificate from his customer. The retailer argues that the seller's permit number written on the invoice is evidence that the customer purchased the goods for resale. However the number by itself does not establish that the customer bought the goods for resale. The retailer is liable for the tax on the sale. (3-4-10)

**c.** Example: A retailer sells a truck load of hay to a customer, does not charge sales tax on the transaction, and fails to obtain an ST-101. The retailer is later audited by the State Tax Commission and is unable to obtain an ST-101 from the customer. The retailer argues that hay is a farm supply and this alone should establish that the sale is exempt. However, the customer may be in a business which does not qualify for the farming production exemption, such as racing or showing horses. Or, the customer may be using the hay for a nonbusiness purpose, such as raising animals for his own consumption. The retailer is liable for the tax on the sale. (3-4-10)

**d.** When a Notice of Deficiency Determination has been issued to a seller by the State Tax Commission and the seller petitions for redetermination as provided by Rule 121 of these rules, he may submit certificates obtained from his customers as evidence of exemption claims, but only if the certificates are presented to the State Tax Commission within ninety (90) days of the date of the Notice of Deficiency Determination. (3-6-00)



**IDAPA 35 - IDAHO STATE TAX COMMISSION**

**35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0103-1202**

**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 63-105A, Idaho Code, and Section 63-802, Idaho Code.

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

**Tuesday - November 20, 2012 - 9:00 a.m.**

**Idaho State Tax Commission  
800 Park Blvd., Plaza IV  
Boise, Idaho**

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

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

Rule 605 clarifies exclusive use provisions in order to determine what leased property is exempt under Idaho Code section 63-602E, the property tax exemption for property used for educational purposes. Rule 605 clarifies that when a building is used for two or more uses one use of which is for non-profit educational purposes, the portion used for educational purposes is exempt and provides that leased personal property, such as computers, is only exempt if it is used exclusively on the school premises or if its use is restricted in such a way to eliminate the possibility of use for other than educational purposes.

Rule 620 clarifies the exemption process provided in House Bill 519 which amended Idaho Code Section 63-602W to add a property tax site improvement related to land exemption for land developers. Rule 620 is needed to clarify the exemption process. Rule 620 defines site improvements, explains an application process and eligibility criteria, clarifies that the exemption is lost if the property is conveyed, and explains that the new assessment will be prorated as set out in Idaho Code section 63-602Y.

**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 May 2, 2012, Idaho Administrative Bulletin, [Vol. 12-5, page 88](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Alan Dornfest at (208) 334-7742.

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 close of business on October 24, 2012.

DATED this August 31, 2012.

Alan Dornfest  
Tax Policy Supervisor  
Idaho State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7742

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0103-1202

~~604. — 608.~~ (RESERVED)

**605. PROPERTY EXEMPT FROM TAXATION - PROPERTY USED FOR SCHOOL OR EDUCATIONAL PURPOSES (RULE 605).**  
Section 63-602E, Idaho Code. ( )

**01. Eligibility of Leased Property.** Leased property used exclusively for nonprofit school or educational purposes, including charter school purposes, shall be eligible for the exemption provided in Section 63-602E, Idaho Code, provided the following criteria are met: ( )

**a.** Leased real property must be exclusively used for the educational purposes identified in Subsection 605.01 of this rule. Such leased real property may be part of a multi-use property, in which case only the portions of the property used for the educational purposes shall be eligible for the exemption. ( )

**b.** Leased personal property must be exclusively used for the educational purposes identified in Subsection 605.01 of this rule. To be considered exclusively used in this manner, such personal property must: ( )

**i.** Be used exclusively at a nonprofit school or charter school facility; or ( )

**ii.** Have its use constrained or restricted in such a way as to effectively eliminate the possibility of use for other than educational purposes. ( )

**02. Application for Exemption for Leased Personal Property.** Only the owner of leased personal property can apply for this exemption. Proof of compliance with the requirements of Paragraph 605.01.b. of this rule is required and may be provided by the lessee. ( )

~~606. -- 608.~~ (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

**620. EXEMPTION FOR NEVER OCCUPIED RESIDENTIAL IMPROVEMENTS AND COMMERCIAL, INDUSTRIAL, AND RESIDENTIAL SITE IMPROVEMENTS (RULE 620).**  
Section 63-602W, Idaho Code. ( )

**01. Qualifying Residential Improvements.** Improvements to any land parcel that are residential and have never been occupied for residential purposes may qualify for the exemption pursuant to Section 63-602W(3), Idaho Code. *This rule is effective January 1, 1998.* Such qualifying improvements can include the following:

~~(1-1-98)~~( )

- a. Single family residences, residential townhouses, and residential condominiums; and (1-1-98)
- b. Attached or unattached ancillary structures which are not intended for commercial use and are constructed contemporaneously with the improvements identified in Paragraph 620.01.a. Such structures may include sheds, fences, swimming pools, garages, and other similar improvements, subject to the limitations of Subsection 620.02. (1-1-98)

**02. Non-Qualifying Residential Improvements.** Never previously occupied residential improvements listed in the following Subsections do not qualify for ~~this~~ the exemption provided in Section 63-602W(3), Idaho Code. ~~(1-1-98)~~( )

a. Location. Ancillary structures (see Paragraph 620.01.b.) that are not located on the parcel on which the improvement is located, identified in Subsection 620.01.a. of this rule, shall not qualify ~~for the exemption provided pursuant to Section 63-602W, Idaho Code.~~ ~~(1-1-98)~~( )

b. Remodeled improvements. Remodeling of previously occupied residential improvements does not qualify ~~for the exemption.~~ ~~(1-1-98)~~( )

c. Improvements included in land value. Improvements included in land value, such as septic tanks, wells, improvements designed to provide utility services or access, and other similar improvements shall not qualify ~~for the exemption.~~ Site improvements associated with land may qualify for the exemption in Section 63-602W(4), Idaho Code, provided a timely application is filed and the requirements of the Section 63-602W(4), Idaho Code, and Subsection 620.03 of this rule are met. ~~(1-1-98)~~( )

**03. Special Provisions for the Exemption for Site Improvements.** Site improvements associated with land which are made or caused to be made by the land developer and held by the land developer are exempt, provided the property qualifies for the exemption pursuant to the provisions of Section 63-602W(4), Idaho Code. ( )

a. “Site improvements associated with land.” “Site improvements associated with land” may include developed access, grading, sanitary facilities, water systems, and utilities. ( )

b. Application. The land developer must file the application required for this exemption with the county commissioners as required by Section 63-602, Idaho Code, by April 15 and the taxpayer and county assessor must be notified of any decision by May 15. ( )

i. For any parcel, the application must describe the parcel in sufficient detail for the assessor to identify the parcel. ( )

ii. Multiple parcels may be included in one (1) application, provided the parcels are under the same ownership and are listed and described in the application in sufficient detail for the assessor to identify each parcel. ( )

iii. The application must be filed in the first year for which the exemption is claimed. In subsequent years, no application is necessary for any parcel that received the exemption in the immediate prior year and still qualifies for the exemption. ( )

c. Proof of eligibility for the exemption. To be eligible, the land developer must provide the county assessor and county commissioners with sufficient proof that: ( )

i. The land developer holds the land upon which the site improvements have been made; ( )

ii. The land developer made or caused to be made the site improvements on the land; ( )

iii. The real property is held by the land developer for sale or consumption in the ordinary course of the

land developer's business; and ( )

iv. The land developer is the owner or are in possession of the land under a land sale contract. ( )

**04. Loss of the Exemption for Site Improvements.** The exemption for site improvements provided in Section 63-602W(4), Idaho Code, is lost when construction of any buildings or structural components of buildings is begun or when title to the land is conveyed from the land developer at any time following the installation of the site improvements. ( )

**a. Conveyance.** Any change in ownership conveying title to land by deed or court order is considered a conveyance and result in loss of this exemption. ( )

**b. Timing.** Site improvements losing this exemption are subject to assessment and taxation in accordance with the change of status provisions of Section 63-602Y, Idaho Code. ( )

**c. Loss by individual parcel.** Loss of exemption will occur on a parcel by parcel basis. For example, if ten (10) adjoining parcels are all receiving the exemption, but one (1) of these parcels no longer qualifies, the remaining nine (9) parcels continue to receive the exemption. ( )

**05. Valuation of Land With Qualifying Exempt Site Improvements.** Land otherwise taxable, but including site improvements that qualify for the exemption pursuant to Section 63-602W(4), Idaho Code, will be assessed at market value, in accordance with the provisions of Rule 217 of these rules. ( )

**06. Forestland and Agricultural Use.** This exemption does not apply to parcels assigned to forestland or agricultural categories. ( )

**07. Reporting and Deducting the Amount of the Exemption.** The value exempted must be reported on the abstract as required in Rule 509 of these rules. Any exempted value previously included in a new construction roll will be deducted from the new construction roll value reported in the first year following the year in which the exemption is granted, as provided in Rule 802 of these rules. ( )

## **IDAPA 35 - IDAHO STATE TAX COMMISSION**

### **35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES**

#### **DOCKET NO. 35-0103-1203**

#### **NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-5221(1) and 63-105A, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

Rules 714, as stated in the Notice of Intent to Promulgate Rules - Negotiated Rulemaking and published in the June 6, 2012, Administrative Bulletin, are not being promulgated due to time restraints and will remain as codified.

Rule 131 is being amended to give guidance to county assessors on how to handle foreclosure sales. This proposed change adopts the International Association of Assessing Officer's "Standard on Verification and Adjustment of Sales.

New Rule 608 conforms with the provisions of House Bill 584a and provides that the homeowner's exemption continues for one year after the death of the individual who has previously qualified. The new proposed rule will explain that the homestead must continue to the claimant's estate without change in the owner of record and that property that are in life estates will not continue to get the exemption.

Rule 630 conforms with the provisions of House Bill 356 and requires that an annual application be submitted to the county in order to claim the property tax exemption under Section 63-4501 I.C. (New Capital Investments Incentive Act). Rule 630 also clarifies what information is required to be listed on the notice that serves as the annual exemption application.

Rule 995 is being amended to identify the specific Bureau of the Census reports from which the populations for cities and counties are obtained for purposes of sales tax distribution.

**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. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 6, 2012, Idaho Administrative Bulletin, [Vol. 12-06, page 38](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Alan Dornfest (208) 334-7742.

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 close of business October 24, 2012.

DATED this 31 day of August, 2012.

Alan Dornfest  
Tax Policy Supervisor  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7742

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0103-1203**

**131. USE OF RATIO STUDY TO TEST FOR EQUALIZATION IN COUNTIES (RULE 131).** (3-30-07)  
Section 63-109, Idaho Code.

**01. Equalization Ratio Study.** Each year the State Tax Commission shall conduct a ratio study to assist in the equalization of assessments of property within and among the primary categories established in Rule 130 of these rules. The ratio study shall be conducted in accordance with the "Standard on Ratio Studies" and the "Standard on Verification and Adjustment of Sales" both referenced in Rule 006 of these rules. The annual ratio study shall test assessments as of January 1 of each year. Except when sales or appraisals must be added or deleted to improve representativeness, sales used will be those occurring within each county between October 1 of the year preceding the year for which assessments are to be tested and September 30 of the year for which assessments are to be tested. Each sale price is to be adjusted for time and compared to market value for assessment purposes for the year for which assessments are to be tested, to compute ratios to be analyzed. The State Tax Commission may use sales from extended time periods and may add appraisals when data is lacking. Equalization ratio studies must consist of at least five (5) sales and/or appraisals. The State Tax Commission may delete sales when necessary to improve representativeness. Sales should be considered as potentially valid if a financial institution is the seller, provided that: ( )

**a.** Such sales comprise more than twenty (20) percent of the sales in any primary category or other category tested for equalization; ( )

**b.** Such sales are validated to account for changes in property characteristics; and ( )

**c.** Any properties that have been vandalized are excluded. ( )

**d.** The study shall be completed in February following the end of the period studied. The appropriate ratio study statistical measure of level shall be the median. ~~(4-7-11)~~( )

**02. Tested For Equalization.** Except as provided in Subsection 131.03 of this rule, categories to be tested for equalization purposes are the primary categories, described in Subsections 130.02 through 130.06 of these rules, provided adequate samples can be obtained. (4-7-11)

**03. Follow-Up Ratio Study.** When indicated, based on criteria in Paragraph 131.03.a. and 131.03.b. of this rule, a follow-up ratio study shall be conducted to test the assessments for January 1 of the year following the year tested by the annual ratio study and shall be based on property sales occurring during the calendar year immediately preceding that date. A follow-up ratio study shall be indicated whenever: (4-2-08)

**a.** The annual ratio study, provided in Subsections 131.01 and 131.02 of this rule, discloses that assessments in any primary category as described in Subsections 130.02 through 130.06 of these rules are out of compliance with the equalization standards of this rule; or (4-2-08)

**b.** The State Tax Commission is informed after the county board of equalization adjourns and before the state board of equalization adjourns of the implementation of assessment changes likely to result in a finding that a category found in compliance with equalization standards following the annual ratio study would be found out of compliance with these standards for the current year's assessments. The follow-up ratio study authorized under this option shall be conducted for the primary category likely to be out of compliance with equalization standards and for any secondary categories comprising the primary category, provided adequate samples can be obtained. (4-7-11)

**04. Notice of Follow-Up Ratio Study.** The State Tax Commission shall notify the county assessor of the reason for and results of the follow-up ratio study. If the follow-up ratio study is conducted as provided in Paragraph 131.03.b. of this rule, the notice shall be sent to the county board of equalization and county assessor and shall describe the assessment changes that resulted in the need for the follow-up ratio study. The notice shall indicate whether any adjustments will be considered by the State Tax Commission at its next equalization meeting in August based on either the annual, or any follow-up ratio study, and the reason for the proposed adjustments. (4-2-08)

**05. Use of Ratio Study Results.** The results of the annual ratio study or any follow-up ratio study shall be one (1) source of information upon which the State Tax Commission may rely when testing assessments for equalization purposes under Section 63-109, Idaho Code. When the results of any ratio study on any primary, or, if applicable under the provisions of Subsection 131.03.b. of this rule, secondary category, described in Subsections 130.02 through 130.07 of these rules, show, with reasonable statistical certainty as defined in Subsection 131.09 of this rule, that the appropriate measure of level of the category studied is less than ninety percent (90%) or greater than one hundred ten percent (110%), the assessment of property within that category may be considered not equalized. When this occurs, the State Tax Commission may, at its annual meeting commencing on the second Monday in August, order the county auditor to adjust the value of all property in the category or any portion of the category included in the analysis conducted in an amount the State Tax Commission finds necessary to accomplish equalization of assessments of property. Within any primary category, except as provided in Subsection 131.06 of this rule, adjustment will not be considered for any secondary category, described in Rule 510, 511, or 512 of these rules, that does not have at least one (1) observation in the ratio study conducted for that primary category. (4-7-11)

**06. Exception from Requirement for at Least One (1) Observation for Use of Secondary Category in Adjusted Value Determination.** Properties identified as secondary categories 10 and 31 rarely sell separately from farms and therefore do not appear in any ratio study. However, the level of assessment typically is similar to that of other rural residential property, including property in secondary categories 12, 15, 34, and 37. For any ratio study where there is an adjustment to be made to the assessed values in the residential designation, such adjustment shall be applied to any assessed value in secondary category 10, provided there is at least one observation (sale) of property identified in either secondary category 12 or 15. Such adjustment shall also be applied to any assessed value in secondary category 31, provided there is at least one (1) observation (sale) of property identified in either secondary category 34 or 37. (3-30-07)

**07. Use of Alternate Ratio Study.** When the follow-up ratio study required by Subsection 131.03 of this rule does not measure the true assessment level, the State Tax Commission may consider adjustment based on the most recent annually conducted ratio study or other information relevant to equalization. If the State Tax Commission has reason to question the representativeness of the sample used in an annual or follow-up ratio study conducted on any primary category, the State Tax Commission may delay implementation of any order to adjust property values until two (2) successive years' ratio studies fail to produce an appropriate measure of level between ninety percent (90%) and one hundred ten percent (110%). (3-30-07)

**08. Submission of Additional Information.** Any party may petition the State Tax Commission to consider any information or studies relevant to equalization. The petition shall include a description of the information to be presented and the petitioner's conclusions drawn from the information. (4-5-95)

**09. Reasonable Statistical Certainty.** For the purposes of Rule 131 and equalization pursuant to Section 63-109, Idaho Code, "reasonable statistical certainty" that any primary category is not equalized shall mean that the appropriate measure of level determined by the ratio study for any category tested for equalization must be provably less than ninety percent (90%) or greater than one hundred ten percent (110%) of market value for assessment purposes. Such a determination shall occur if: (4-7-11)

**a.** The appropriate measure of level for the category(ies) being tested is less than ninety percent (90%)

or greater than one hundred ten percent (110%) and a ninety percent (90%) two-tailed confidence interval around the appropriate measure of level fails to include ninety percent (90%) or one hundred ten percent (110%); or (4-7-11)

b. The appropriate measure of level for the category(ies) being tested has been less than ninety percent (90%) or greater than one hundred ten percent (110%) as determined by the most recent previous two (2) ratio studies on the category(ies) and an eighty percent (80%) two-tailed confidence interval around the appropriate measure of level fails to include ninety percent (90%) or one hundred ten percent (110%). No ratio study completed prior to August 31, 2007 will be considered as one of the most recent previous two (2) ratio studies. (4-7-11)

10. **Cross References.** The primary categories are described in Subsections 130.02 through 130.06 of these rules, and the secondary categories are described in Rules 510, 511, and 512 of these rules. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

604. -- ~~6087~~. (RESERVED)

**608. PROPERTY EXEMPT FROM TAXATION - HOMESTEAD - CONTINUED ELIGIBILITY AFTER DEATH OF CLAIMANT (RULE 608).**  
Section 63-602G, Idaho Code. ( )

**01. Ownership Interest.** For the homestead previously qualifying for the exemption provided in Section 63-602G, Idaho Code, to continue to qualify in the year following the death of the qualifying claimant, the homestead must continue to be part of the claimant's estate, without change in record owner. If the ownership interest upon which the exemption had been granted was a life estate, the continuation provided in Section 63-602G(8), Idaho Code, does not apply. ( )

**02. Occupancy.** The continuation of this exemption shall not be affected by occupancy status of the property during the year following the claimant's death. For example, the property may be vacant or rented during that period and may be used for something other than residential purposes. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**630. TAX EXEMPTION FOR NEW CAPITAL INVESTMENTS (RULE 630).**  
Section 63-4502, Idaho Code. (3-29-12)

**01. Notification of New Capital Investment.** (3-29-12)

a. Prior to receiving the benefit of the tax exemption, the taxpayer shall notify the county in which the project site is located that the taxpayer expects to meet the criteria of the New Capital Investments Tax exemption. Notification shall be accomplished by submitting a written declaration or notification with the ~~county assessor and the~~ board of county commissioners containing the following information: ~~(3-29-12)~~( )

i. The name and address of the taxpayer; (3-29-12)

ii. A description of the new capital investment project; (3-29-12)

iii. The assessor's parcel number(s) identifying the location of the project site; (3-29-12)

iv. The date that the qualifying period began; (3-29-12)

v. A statement that the taxpayer will make a qualified new capital investment of at least one billion dollars (\$1,000,000,000) within the qualifying period, which shall be specified. (3-29-12)



b. The notification required hereunder may be submitted by the taxpayer to the ~~county assessor and the~~ board of county commissioners at any time after the qualifying period begins. However, if the notification is submitted after ~~May~~ April 15 in a given year, a taxpayer may receive the benefit of the exemption only for tax years following the year in which the notification is filed. Submittal of the notification required hereunder shall constitute application for the exemption in compliance with Section 63-602, Idaho Code. Until the taxpayer meets all the requirements for the New Capital Investments Tax exemption, for each year after the first year in which the exemption is granted, the notice must identify the name and address of the taxpayer and the location of the project site, but does not need to provide additional information as required in Paragraph 630.01.a. of this rule. (3-29-12)( )

**02. Property of the Taxpayer.** Property of a taxpayer includes all real or personal property that is owned by or leased to the taxpayer under an agreement that makes the taxpayer responsible for the payment of any property taxes on the property. (3-29-12)

**03. New Construction.** Property taxable under Section 63-4502, Idaho Code and that qualifies for listing on the new construction roll as described by Section 63-301(A)3, Idaho Code, should be listed on the new construction roll. (3-29-12)

**04. Failure to Make the Qualifying New Capital Investment.** ( )

a. If the taxpayer fails to make the qualifying new capital investment during the qualifying period, the property shall lose the exemption granted by this section ~~beginning with the tax year immediately following the~~ at the conclusion of the qualifying period. (3-29-12)( )

b. In the event that, at any time during the project period, the taxpayer no longer intends to fulfill the qualified new capital investment requirements, the taxpayer must notify the county commissioners who shall notify the county assessor. Upon receipt of such notification, the property shall be taxable for the remainder of the year in which the notification is provided, pursuant to Section 63-602Y, Idaho Code. Failure of the taxpayer to provide such notice does not prevent the county assessor from discovering the taxpayer's intent through alternate procedures and then notifying the county commissioners that the requirements for the exemption are no longer met. In such an instance, the taxpayer must be notified and may appeal loss of the exemption to the county board of equalization as provided in Section 63-501A, Idaho Code. ( )

**05. Continuation of Tax Exemption Following the End of the Project Period.** ( )

a. At any time during the qualifying period, but not later than ninety (90) days after the conclusion of the qualifying period, the taxpayer must provide notice to the county commissioners with sufficient evidence to prove that the required qualifying new capital investment has been made. ( )

b. Once the taxpayer has successfully met all the requirements pursuant to Section 63-4502, Idaho Code, and provided notice to the county commissioners pursuant to Paragraph 630.05.a. of this rule, the county commissioners shall notify the county assessor and taxpayer of the taxpayer's continuing qualification for the exemption for all years thereafter. The county assessor shall retain this notice. ( )

c. After the year in which the taxpayer has been notified of continuing qualification as provided in Paragraph 630.05.b. of this rule, the taxpayer must continue to notify the county annually to identify the property to be exempted pursuant to Subsection 630.05. Failure to make such notification will not invalidate the exemption; the county assessor must then apply the exemption against the assessed value of the taxpayer's highest value parcel within the county. ( )

**056. Cross Reference.** For an explanation of the treatment of new construction relating to Sections 63-802 and 63-301A, Idaho Code, see Rule 802 of these rules. (3-29-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**995. CERTIFICATION OF SALES TAX DISTRIBUTION (RULE 995).**  
Section 63-3638, Idaho Code.

(5-3-03)

**01. Most Current Census.** Population shall be from the most current population census or estimate of incorporated city populations available from “Table 4, Annual Estimates of the Resident Population for Incorporated Places in Idaho” and estimate of county populations from “Table 1, Annual Estimates of the Resident Population for Counties of Idaho” available from the Bureau of the Census during the quarter of the year for which any distribution of sales tax money is to be made. If the State Tax Commission is notified that the Bureau of the Census has revised any city or county population estimates, the revised estimates shall be used for the distribution of sales tax money.  
(3-24-94)( )

**02. Market Value for Assessment Purposes.** Market value for assessment purposes shall mean the market value certified to the State Tax Commission pursuant to Section 63-510, Idaho Code, and shall include homeowner’s exemptions, and the amount of real and personal property value which exceeds the assessed value shown on the base assessment roll for a revenue allocation area as defined in Section 50-2903(15), Idaho Code, for the calendar year immediately preceding the current fiscal year.  
(5-3-03)

**03. Current Fiscal Year.** For the purposes of this section, current fiscal year shall mean the current fiscal year of the state of Idaho. For distribution purposes, the current fiscal year shall begin with the distribution made in October, following collection of sales taxes in July, August, and September.  
(3-30-01)

**04. Incorporated City.** Incorporated city shall, for the current fiscal year, have a duly elected mayor and city council, ~~and be recognized by the Bureau of the Census, U.S. Department of Commerce, for the distribution of federal general revenue sharing monies.~~  
(3-24-94)( )

**05. ~~Population and~~ Valuation Estimates.** ~~Population and~~ Valuation estimates for distribution of revenue sharing monies shall be updated at least annually. Updated estimates shall be used beginning with the October distribution.  
(3-24-94)( )

**06. Determination Date and Eligibility.** The eligibility of each city for revenue sharing monies pursuant to Section 63-3638(10)(a), Idaho Code, shall be determined as of July 1 of the current year. Cities formed after January 1, 2001, shall also be entitled to a share of the money pursuant to the provisions of Section 63-3638(10)(c), Idaho Code.  
(4-6-05)

**07. Quarterly Certification.** The State Tax Commission shall certify quarterly to each county clerk the base and excess shares of the distributions required pursuant to Section 63-3638(10)(c) and 63-3638(10)(d), Idaho Code, and the distributions to cities and counties required pursuant to Section 63-3638(10)(a) and 63-3638(10)(b), Idaho Code. Each county clerk shall calculate and certify the distribution of these monies to the eligible taxing districts based on the directives of the State Tax Commission.  
(4-6-05)

**a. City and County Base Shares.** For cities and counties, the initial base share shall be the amount of money to which they were entitled for the fourth calendar quarter of 1999, based on the provisions of Section 63-3638(e), Idaho Code, as such section existed prior to July 1, 2000. In addition, the initial base share shall be adjusted proportionally to reflect increases that become available or decreases that occur, unless increases exceed five percent (5%) of the initial base share.  
(3-30-01)

**b. Special Purpose Taxing District Base Shares.** For special purpose taxing districts the initial base share shall be the amount of money to which they were entitled for the fourth calendar quarter of 1999, based on the provisions of Section 63-3638(e), Idaho Code, as such section existed prior to July 1, 2000. Special purpose taxing district initial base shares shall be proportionally reduced to reflect decreases in the amount of sales tax available to be distributed.  
(3-30-01)

**c. Excess Shares.** Excess shares shall be any amounts above the base share that any city, county or special purpose taxing district is entitled to receive pursuant to Section 63-3638(10)(c) or 63-3638(10)(d), Idaho Code. These amounts shall not be subject to redistribution provisions of Section 40-801, Idaho Code.  
(4-6-05)

**d.** Shares Pursuant to Section 63-3638(10)(a) or 63-3638(10)(b), Idaho Code. Shares to be distributed pursuant to Section 63-3638(10)(a) or 63-3638(10)(b), Idaho Code, shall be termed "revenue sharing." Such shares shall be subject to quarterly distribution and for this purpose, the one million three hundred twenty thousand dollars (\$1,320,000) distribution pursuant to Section 63-3638(10)(b)(i), Idaho Code, shall be considered an annual amount and shall be divided into four (4) equal shares. (4-6-05)

**08. Notification of Value.** The county auditor shall notify the State Tax Commission of the value of each taxing district and unit as specified in Section 63-510, Idaho Code. (3-30-01)

**09. Corrections.** (3-30-01)

**a.** When distributions have been made erroneously, corrections shall be made to the following quarterly distribution(s) so as to provide the quickest practicable restitution to affected taxing districts. Corrections shall be made to reconcile erroneous distributions made for the current fiscal year. Errors made in distributions for the last quarter of the current fiscal year shall be corrected as soon as practicable in distributions made for the following fiscal year. (4-6-05)

**b.** The State Tax Commission shall notify affected county clerks when the State Tax Commission becomes aware of an error in the distribution of the base or excess shares. (3-30-01)

**c.** The State Tax Commission shall notify affected cities or county clerks when the State Tax Commission becomes aware of an error in the distribution of city or county revenue sharing monies. (3-30-01)

## IDAPA 35 - IDAHO STATE TAX COMMISSION

### 35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

#### DOCKET NO. 35-0103-1204

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-5221(1) and 63-105A, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

Rule 600 is being amended to comply with recently enacted HB356 which requires applicants for certain property tax exemptions to be notified of the decision to grant or deny the application by May 15. The rule is being amended to state that for all exemptions requiring an application, the applicant will be notified of the decision of the county commissioners by May 15 unless a different date is provided in the exemption statute. The rule further will provide that for all property subject to assessment by the State Tax Commission the application for any exemption shall be included with the operator's statement.

Rule 803 is being amended to comply with Section 63-1305A, Idaho Code, requiring that the taxing district first budgets the maximum amount of property tax permitted pursuant to section 63-802, Idaho Code, including any foregone amount. This requirement shall be deemed to have been met if, despite additional budget allowed pursuant to Section 63-802, Idaho Code, every fund used by the taxing district levies at the maximum levy rate provided by law, or, if no maximum levy rate is provided, the fund levies the maximum permitted budget amount. To the extent necessary to enable all previously accrued foregone amounts to be levied, the taxing district may need to use additional funds within which it is permitted to levy property taxes before levying as permitted pursuant to Section 63-1305A, Idaho Code. Instructions are needed in order to implement recently enacted HB697 with respect to the required use of foregone amount.

**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. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 4, 2012, Idaho Administrative Bulletin, [Vol. 12-7, page 108](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Alan Dornfest (208) 334-7742.

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 close of business October 24, 2012.

DATED this 31 day of August, 2012.

Alan Dornfest  
Tax Policy Supervisor  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7742

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0103-1204

**600. PROPERTY EXEMPT FROM TAXATION (RULE 600).**

Section 63-602, Idaho Code. ( )

**01. Burden of Proof.** The burden of proof of entitlement to the exemption is on the person claiming exemption for the property. ~~(4-5-00)~~( )

**02. Notice of Decision.** ( )

**a.** For property subject to local assessment with exemptions requiring annual application as specified in the statute providing the exemption or in Section 63-602(3), Idaho Code, the taxpayer must be notified of the decision of the county commissioners to grant or deny the exemption by May 15 unless a different date is prescribed in the law providing the exemption. ( )

**b.** For property subject to assessment by the State Tax Commission, application for any exemption shall be included with the operator's statement to be submitted as provided in Rule 404 of these rules. ( )

**03. Confidentiality.** Information disclosed as part of an application for an exemption is confidential to the extent provided by in Section 9-340D, Idaho Code, or elsewhere in law. Information disclosed to the county commissioners as part of the application process for an exemption shall be deemed submitted to the assessor and entitled to any confidentiality that would have been conferred had such information been disclosed initially to the assessor. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**803. BUDGET CERTIFICATION -- DOLLAR CERTIFICATION FORM (L-2 FORM) (RULE 803).**

Sections 63-602G(5), 63-802, 63-803, 63-3029B(4), and 63-3638(10), Idaho Code. (4-2-08)

**01. Definitions.** (4-5-00)

**a.** "Dollar Certification Form" (L-2 Form). The Dollar Certification Form (L-2 Form) is the form used to submit to the State Tax Commission the budget request from each Board of County Commissioners for each taxing district. This form shall be presumed a true and correct representation of the budget previously prepared and approved by a taxing district. The budget will be presumed adopted in accordance with pertinent statutory provisions unless clear and convincing documentary evidence establishes that a budget results in an unauthorized levy and action as provided in Section 63-809, Idaho Code. (4-6-05)

**b.** "Prior Year's Market Value for Assessment Purposes." Prior year's market value for assessment purposes shall mean the value used to calculate levies during the immediate prior year. This value shall be used for calculating the permanent budget increase permitted for cities, pursuant to Section 63-802(1)(f), Idaho Code.

(4-2-08)

**c.** “Annual Budget.” For the purpose of calculating dollar amount increases permitted pursuant to Section 63-802(1), Idaho Code, the annual budget shall include any amount approved as a result of an election held pursuant to Sections 63-802(1)(f) or 63-802(1)(g), Idaho Code, provided that said amount is certified on the L-2 Form as part of the budget request. If the amount certified does not include the entire amount approved as a result of the election held pursuant to Sections 63-802(1)(f) or 63-802(1)(g), Idaho Code, then the amount not used shall be added to the foregone increase amount determined for the taxing district. See the following example.

<b>CERTIFIED PROPERTY TAX BUDGET LIBRARY DISTRICT*</b>				
	FY 1999	FY 2000	FY 2001	FY 2002
Annual Budget	\$10,000	\$10,000	\$10,700	\$11,621
3% Increase	\$0	\$300	\$321	\$349
Subtotal	\$10,000	\$10,300	\$11,021	\$11,970
1999 Election Amount	\$0	\$400 of \$1,000	\$600 of \$1,000	\$0
Certified Budget	\$10,000	\$10,700	\$11,621	\$11,970

\*The Library District with zero dollars (\$0) in value for new construction and/or annexation approves an additional budget amount of one thousand dollars (\$1,000) in 1999, but only certifies four hundred dollars (\$400) for the year 2000. Note the example does not account for any foregone amount resulting from the district's decision to not increase its budget by three percent (3%) in 1997, 1998 or 1999. (4-6-05)

**d.** “Property Tax Funded Budget.” Property tax funded budget means that portion of any taxing district's budget certified to the Board of County Commissioners, approved by the State Tax Commission, and subject to the limitations of Section 63-802, Idaho Code. (3-20-04)

**e.** “Recovered/Recaptured Property Substitute Funds Tax List.” Recovered/recaptured property tax substitute funds list means the report sent by the county auditor to the appropriate taxing district(s)/unit(s) by the first Monday in August and to the State Tax Commission with the L-2 Forms, listing the amount of revenue distributed to each appropriate taxing district/unit as recovery of property tax or other payments during the twelve (12) month period ending June 30 each year under the following sections: (5-8-09)

- i. Section 63-602G(5), Idaho Code; and (5-8-09)
- ii. Section 63-3029B(4), Idaho Code; and (5-8-09)
- iii. Section 31-808(11), Idaho Code. (5-8-09)

**f.** “Taxing District/Unit.” Taxing district/unit means any governmental entity with authority to levy property taxes as defined in Section 63-201, Idaho Code, and those noncountywide governmental entities without authority to levy property taxes but on whose behalf such taxes are levied or allocated by an authorized entity such as the county or city for such entities as county road and bridge funds or urban renewal agencies, respectively. (4-6-05)

**g.** “New Taxing District.” For property tax budget and levy purposes, new taxing district means any taxing district for which no property tax revenue has previously been levied. See the Idaho Supreme Court case of Idaho County Property Owners Association, Inc. v. Syringa General Hospital District, 119 Idaho 309, 805 P.2d 1233 (1991). (4-2-08)

**02. Budget Certification.** The required budget certification shall be made to each Board of County Commissioners representing each county in which the district is located by submitting the completed L-2 Form prescribed by the State Tax Commission. (4-6-05)

**03. Budget Certification Requested Documents.** Using the completed L-2 Form, each board of

county commissioners shall submit to the State Tax Commission a budget request for each taxing district in the county that certifies a budget request to finance the property tax funded portion of its annual budget. The board of county commissioners shall only submit documentation specifically requested by the State Tax Commission.

(4-2-08)

**04. L-2 Form Contents.** Each taxing district or unit completing an L-2 Form shall include the following information on or with this form. (3-20-04)

**a.** “Department or Fund.” Identify the department or fund for which the taxing district is requesting a budget for the current tax year. (4-5-00)

**b.** “Total Approved Budget.” List the dollar amount of the total budget for each department or fund identified. The amounts must include all money that a taxing district has a potential to spend at the time the budget is set, regardless of whether funds are to be raised from property tax. (4-5-00)

**c.** “Cash Forward Balance.” List any money brought forward from a prior year to help fund the approved budget. Cash forward balance (Column 3) is the difference between the total approved budget (Column 2) and the sum of amounts reported as other revenue not shown in Column 5 (Column 4), agricultural equipment property tax replacement (Column 5), and balance to be levied (Column 6). (3-15-02)

**d.** “Other Revenue not Shown in Column 5.” List the revenue included in the total approved budget to be derived from sources other than property tax or money brought forward from a prior year. For example, sales tax revenue is included. (3-15-02)

**e.** “Property Tax Replacement.” Report the following: (5-8-09)

i. The amount of money received annually under Section 63-3638(10), Idaho Code, as replacement revenue for the agricultural equipment exemption under Section 63-602EE, Idaho Code; (4-2-08)

ii. The amount of money received as recovery of property tax exemption under Section 63-602G(5), Idaho Code, and listed on the “Recovered/recaptured property tax substitute funds list”; (5-8-09)

iii. The amount of money received as recapture of the property tax benefit under Section 63-3029B(4), Idaho Code, and listed on the “Recovered/recaptured property tax substitute funds list”; and (5-8-09)

iv. The amount of money transferred from the interest-bearing trust to the county indigent fund under Section 31-808(11), Idaho Code. (5-8-09)

v. The appropriate amount of money listed on the statement and distributed to the county and each appropriate city under Section 63-2603, Idaho Code, as county property tax relief and detention facility debt retirement. (4-6-05)

**f.** “Balance to be Levied.” Report the amount of money included in the total approved budget to be derived from property tax. (3-15-02)

**g.** Other Information. Provide the following additional information. (4-5-00)

i. The name of the taxing district or unit; (3-20-04)

ii. The date of voter approval (if required by statute) and effective period for any new or increased fund which is exempt from the budget limitations in Section 63-802, Idaho Code; (4-5-00)

iii. The signature, date signed, printed name, address, and phone number of an authorized representative of the taxing district; and (5-3-03)

iv. For a hospital district which has held a public hearing, a signature certifying such action. (4-5-00)

- h.** Attached Information. Other information submitted to the county auditor with the L-2 Form. (4-6-05)
- i.** For all taxing districts, L-2 worksheet. (3-20-04)
- ii.** For newly formed recreation or auditorium districts, a copy of the petition forming the district showing any levy restrictions imposed by that petition. (3-20-04)
- iii.** For any new ballot measures (bonds, overrides, permanent overrides, supplemental maintenance and operations funds, and plant facility funds), notice of election and election results. (3-20-04)
- iv.** Voter approved fund tracker. (3-20-04)
- v.** For fire districts, a copy of any new agreements with utility companies providing for payment of property taxes by that utility company to that fire district. (3-20-04)
- vi.** For any city with city funded library operations and services at the time of consolidation with any library district, each such city must submit a certification to the Board of County Commissioners and the Board of the Library District reporting the dedicated portion of that city's property tax funded library fund budget and separately reporting any portion of its property tax funded general fund budget used to fund library operations or services at the time of the election for consolidation with the library district. (3-20-04)
- vii.** For any library district consolidating with any city that had any portion of its property tax funded budget(s) dedicated to library operations or services at the time of the election for consolidation, each such library district must submit to the Board of County Commissioners a copy of the certification from that city reporting the information provided for in Subparagraph 803.04.h.vi. of this rule. (4-6-05)

**05. Special Provisions for Fire Districts Levying Against Operating Property.** To prevent double counting of public utility property values, for any year following the first year in which any fire district increases its budget using the provision of Section 63-802(2), Idaho Code, such fire district shall not be permitted further increases under this provision unless the following conditions are met: (3-30-01)

- a.** The fire district and public utility have entered into a new agreement of consent to provide fire protection to the public utility; and (3-30-01)
- b.** Said new agreement succeeds the original agreement; and (3-30-01)
- c.** In the first year in which levies are certified following the new agreement, the difference between the current year's taxable value of the consenting public utility and public utility value used in previous budget calculations made pursuant to this section is used in place of the current year's taxable value of the consenting public utility. (3-30-01)

**06. Special Provisions for Property Tax Replacement other than Replacement Money Received for Property Subject to the Exemption Provided in Section 63-602KK, Idaho Code.** With the exception of property tax replacement monies received for property subject to the exemption provided in Section 63-602KK, Idaho Code, property tax replacement monies must be reported on the L-2 Form and separately identified on accompanying worksheets. For all taxing districts, these monies must be subtracted from the "balance to be levied". The reduced balance shall be used to compute levies, but the maximum amount permitted pursuant to Section 63-802, Idaho Code, shall be based on the sum of these property tax replacement monies, excluding monies received pursuant to Section 31-808(11), Idaho Code, and the amount actually levied. (5-8-09)

- a.** The State Tax Commission shall, by the fourth Monday of July, notify each county clerk if the amount of property tax replacement money, pursuant to Section 63-3638(10), Idaho Code, to be paid to a taxing district changes from the amount paid in the preceding year. By the first Monday of May, the State Tax Commission shall further notify each school district and each county clerk of any changes in the amount of property tax replacement money to be received by that school district pursuant to Section 63-3638(10), Idaho Code. (5-8-09)



**b.** By no later than the first Monday of August of each year, each county clerk shall notify each appropriate taxing district or unit of the total amount of property tax replacement monies that will be received. (4-2-08)

**c.** Except as provided in Paragraph 803.06.d. of this rule, the subtraction required in Subsection 803.06 of this rule may be from any fund(s) subject to the limitations of Section 63-802, Idaho Code. For school districts this subtraction must be first from funds subject to the limitations of Section 63-802, Idaho Code, then from other property tax funded budgets. (5-8-09)

**d.** For counties receiving monies described in Section 31-808(11), Idaho Code, the amount of money transferred from the interest-bearing trust to the county indigent fund shall be subtracted from the maximum amount of property tax revenue permitted pursuant to Section 63-802, Idaho Code. (5-8-09)

**e.** Levy limits shall be tested against the amount actually levied. (3-15-02)

**07. Special Provisions for Property Tax Replacement Received for Property Subject to the Exemption Provided in Section 63-602KK, Idaho Code.** The following procedure is to be used to calculate levy rates and maximum amounts of property tax revenue for taxing districts or units that receive property tax replacement money for property subject to the exemption in Section 63-602KK, Idaho Code. (5-8-09)

**a.** Such property tax replacement money is not to be subtracted from the “balance to be levied” amount certified on the L-2 Form. (5-8-09)

**b.** The otherwise taxable value of the property subject to the exemption provided in Section 63-602KK, Idaho Code, is to be included in the value of the taxing district or unit used to calculate the levy rate. (5-8-09)

**c.** The maximum amount permitted pursuant to Section 63-802, Idaho Code, shall be based on the amount actually levied plus other property tax replacement money as defined in Paragraph 803.4.e. of this rule, excluding any amount transferred as provided in Section 31-808(11), Idaho Code. (5-8-09)

**08. Special Provisions for Library Districts Consolidating with Any City’s Existing Library Operations or Services.** For any library district consolidating with any city’s existing library operations or services, the amount of the dedicated property tax funded general fund and library fund budgets certified by the city under Subparagraph 803.04.h.vi., of this rule shall be added to that library district’s property tax funded budget in effect at the time of the election for consolidation. This total shall be used as this district’s property tax funded budget for the most recent year of the three (3) years preceding the current tax year for the purpose of deciding the property tax funded budget that may be increased as provided by Section 63-802, Idaho Code. (4-6-05)

**09. Special Provisions for Cities with Existing Library Operations or Services Consolidating with Any Library District.** For any city with existing library operations or services at the time of consolidation with any library district, the amount of the dedicated property tax funded library fund budget included in the certification by the city under Subparagraph 803.04.h.vi., of this rule shall be subtracted from that city’s total property tax funded budget in effect at the time of the election for the consolidation. This difference shall be used as this city’s property tax funded budget for the most recent year of the three (3) years preceding the current tax year for the purpose of deciding the property tax funded budget that may be increased as provided by Section 63-802, Idaho Code. (4-6-05)

**10. Special Provisions for Calculating Total Levy Rate for Taxing Districts or Units with Multiple Funds.** Whenever the “Calculated Levy Rate” column of the L-2 Form indicates that a levy rate has been calculated for more than one (1) fund for any taxing district or unit, the “Column Total” entry must be the sum of the levy rates calculated for each fund. Prior to this summation, the levy rates to be summed must be rounded or truncated at the ninth decimal place. No additional rounding is permitted for the column total. (4-6-05)

**11. Special Provisions for School Districts’ Tort Funds - Hypothetical New Construction Levy.** To calculate the new construction portion of the allowed annual increase in a school district’s tort fund under Section 63-802(1), Idaho Code, calculate a Hypothetical New Construction Levy. To calculate this levy, sum the school district’s tort fund for the prior year and the agricultural equipment replacement revenue subtracted from that tort fund, then

divide this sum by the school district's taxable value used to determine the tort fund's levy for the prior year. For the current year, the allowed tort fund increase for new construction is this Hypothetical New Construction Levy times the current year's new construction roll value for the school district. (4-2-08)

**12. Special Provisions for Interim Abatement Districts.** When an interim abatement district transitions into a formally defined abatement district under Section 39-2812, Idaho Code, the formally defined abatement district shall not be considered a new taxing district as defined in Paragraph 803.01.g. of this rule for the purposes of Section 63-802, Idaho Code. For the formally defined abatement district, the annual budget subject to the limitations of Section 63-802, Idaho Code, shall be the amount of property tax revenue approved for the interim abatement district. (4-2-08)

**13. Special Provisions for Levies for Payment of Judgments by Order of Court.** The levy permitted pursuant to Section 63-1305A, Idaho Code, requires that the taxing district first budgets the maximum amount of property tax permitted pursuant to Section 63-802, Idaho Code, including any foregone amount. This requirement shall be deemed to have been met if, despite additional budget allowed pursuant to Section 63-802, Idaho Code, every fund used by the taxing district levies at the maximum levy rate provided by law, or, if no maximum levy rate is provided, the fund levies the maximum permitted budget amount. To the extent necessary to enable all previously accrued foregone amounts to be levied, the taxing district may need to use additional funds within which it is permitted to levy property taxes before levying as permitted pursuant to Section 63-1305A, Idaho Code. ( )

**134. Cross Reference for School Districts with Tuition Funds.** For any school district certifying a tuition fund levy in 2006 or any year thereafter, see Section 33-1408, Idaho Code, as amended by the First Extraordinary Session of the Fifty-eighth Legislature, for clarification that the amount of property tax revenue for a tuition fund is not subject to the limitations of Section 63-802, Idaho Code. (4-2-08)

**IDAPA 35 - IDAHO STATE TAX COMMISSION**

**35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0103-1205**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-5221(1) and 63-105A, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

Rule 218 needs to be amended to provide assessors standard guidance in preparation of maps. Assessor's Plat Book, the title of the adopted Bureau of Land Management's Survey Instruction Manual changed. Also, Rule 218 is being modernized to permit maps to be produced in digital format and reference to a 1973 edition of a manual is being updated to the most recent 2009 edition.

**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. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the August 1, 2012, Idaho Administrative Bulletin, [Vol. 12-8, page 74](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Alan Dornfest (208) 334-7742.

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 close of business October 24, 2012.

DATED this 31 day of August, 2012.

Alan Dornfest  
Tax Policy Supervisor  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7742

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0103-1205**

**218. ASSESSOR'S PLAT BOOK (RULE 218).**

Sections 50-1304, 63-209, 63-210, 63-212, 63-219, and 63-307, Idaho Code.

(5-8-09)

**01. Plat Maps.** The assessor shall prepare ~~P~~plat maps for all ~~privately-owned~~ land shall be prepared.

~~(7-1-97)~~( )

**a.** ~~Permanent plats may be drafted on~~ Plat map format. Plat maps may be drafted and maintained either in ink, on drafting film, or in a digital format. When such maps are on drafting film, thirty (30) inch by thirty-six (36) inch, 0.003 inch drafting film (minimum thickness) should be used. Smaller plat map sizes are permitted as long as they clearly depict parcel boundaries and dimensions.

~~(5-8-09)~~( )

**b.** Maintenance of plat maps. Plat maps of townships, Ssections, aliquot parts, subdivisions, and parcel boundaries completed after July 1, 2013 shall be ~~drafted with ink on drafting film and updated and maintained~~ in accordance with the ~~Bureau of Land Management (BLM) "Manual of Surveying Instructions for the Survey of the Public Lands of the United States" published by the Government Printing Office, 1973 edition, Technical Bulletin No. 6 referenced in Rule 006 of these rules.~~

~~(5-8-09)~~( )

**c.** Maintenance of parcel numbers and all other desired information. Parcel numbers, and all other desired information, shall be maintained in a digital format or drafted with ink. Annotative information shall be added as necessary and, if plotted by computer be of appropriate font style and size to be easily readable. The minimum letter height shall be one point two five (1.25) millimeters.

~~(5-8-09)~~( )

**~~02.~~ Section Outlines.** Section outlines shall be ~~platted mapped~~ according to:

~~(7-1-97)~~( )

**~~ia.~~** Technical descriptions of Bureau of Land Management, formerly the General Land Office (GLO), surveys, (Section 31-2709, Idaho Code);

(7-1-97)

**~~ib.~~** Descriptions on recorded surveys (Sections 55-1901 through 55-1911, Idaho Code);

(7-1-97)

**~~ic.~~** Recorded corner perpetuation records (Sections 55-1603 through 55-1612, Idaho Code);

(7-1-97)

**~~id.~~** Recorded subdivision plats and assessor's plats (Sections 50-1301 through 50-1330, 63-209, and 63-210(2) Idaho Code);

(7-1-97)

**~~ie.~~** Deeds or contracts with metes and bounds descriptions (Section 31-2709, Idaho Code);

(7-1-97)

**~~if.~~** Highway, railroad, and other engineering quality route surveys;

(7-1-97)

**~~ig.~~** Relevant court decisions; and

(7-1-97)

**~~ih.~~** Unrecorded data from registered land surveyors (Section 31-2709, Idaho Code).

(7-1-97)

**~~e03.~~ Subdivision of Sections.** Subdivision of sections shall be ~~platted mapped~~ in accordance with Sections 31-2709 and 63-209, Idaho Code.

~~(5-8-09)~~( )

**~~024.~~ Map Scales.** Non-Computer and computer generated maps shall be scaled.

(7-1-97)

**a.** Non- computer generated maps. Non computer generated ~~plats maps~~ shall be:

~~(5-8-09)~~( )

i. One (1) township at one (1) inch = fourteen thousand four hundred (14,400) inches (1,200 feet), 1:14,400;

(5-8-09)

ii. Four (4) sections at one (1) inch = four thousand eight hundred (4,800) inches (400 feet), 1:4,800; one (1) section at one (1) inch = twenty four hundred (2400) inches (200 feet), 1:2,400;

(5-8-09)

iii. One (1) quarter section at one (1) inch = twelve hundred (1,200) inches (100 feet), 1:1,200.

(5-8-09)

**b.** Mapping done from aerial photographs. Mapping done from aerial photographs will have the scale recalculated and shown on the map. ~~(7-1-97)~~( )

**c.** Plat maps of subdivision, townsite, and metes and bounds parcels. Subdivision, townsite, and metes and bounds parcels shall be ~~platted~~ mapped to include the basis of bearing with monuments and their coordinates relative to the "Idaho Coordinate System" as described by Sections 31-2709, 50-1301, 50-1303, and 50-1304, Idaho Code. ~~(5-8-09)~~( )

**d.** Drafting of plat titles, subdivision names, and parcel dimensions. Plat titles, subdivision names, and parcel dimensions shall be drafted with ink, or generated by computer at an appropriate scale. The minimum letter height shall be one point two five (1.25) millimeters. ~~(7-1-97)~~( )

**035.** Property Ownership Records. Ownership shall be shown on the property ownership records. (7-1-97)

**a.** Ownership notations. Ownership notations include the reputed owner of the property or note that the owner is unknown, or list other persons with interests of record. Ownership may be ascertained from numerous recorded sources as described in Sections 63-212 and 63-307, Idaho Code. ~~(5-8-09)~~( )

**b.** Insertion of additional names. Purchasers, agents, guardians, executors, administrators, heirs, and claimants may have their names inserted with the recorded owner's name as explained in Sections 63-212 and 63-307, Idaho Code. ~~(5-8-09)~~( )

## **IDAPA 35 - IDAHO STATE TAX COMMISSION**

### **35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0103-1207**

#### **NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-5221(1) and 63-105A, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

Rule 000 is being amended to update the references to the portions of Idaho Code which specifically authorize property tax administrative rules.

Rule 003 is being amended to update and correct certain reference to administrative appeals available under the property tax administrative rules.

Rule 006 is being amended to update references to appropriate and current editions of guides and professional standards used to determine values of certain property and to measure assessment level and uniformity.

Rule 225 is being amended to require that taxing districts and urban renewal revenue allocation areas submit a map upon dissolution. This submittal is unnecessary. Rule 225 is being amended to delete this requirement.

Rule 313 is being amended to clarify that transient personal property located in a neighboring state for a time but does not pay taxes to the neighboring state pays taxes in Idaho based on the value that is computed by including the number of days that the property was in the neighboring state in the proration formula used to compute the value.

Rule 404 is being amended to conform to statute which expands the definition of "pipeline" to include gas gathering lines and brings gathering lines under the regulation of the public utilities commission and therefore will be appraised by state tax commission appraisers. Rule 404 will require that the miles of gathering lines be reported on the natural gas pipeline companies' operator statement to the tax commission for apportionment purposes.

Rule 509 is being amended to add the site improvement exemption found in Idaho Code section 63-902W to the list of property tax exemptions that must be reported to the Tax Commission on the counties property tax roll abstract.

Rule 510 is being amended to delete unused land category 8.

Rule 511 is being amended to delete unused categories 44, 60, 61 and 62 to avoid confusion.

Rule 612 is being amended to provide county assessors guidance on the administration of the property tax exemption for recreational vehicles found in Idaho Code section 63-602J. The rule amendment confirms that the property tax exemption for recreational vehicles is only available for those recreational vehicle owners who have paid the IDT annual license fee.

Rule 619 is being amended to change the due date for the exemption application for operating properties from March 15 to correspond to the due date for the operator's statement of April 30 and to direct the filing of the application for locally assessed property to the county commissioners which conforms with the process enacted by passed House Bill 356.

Rule 802 is being amended to explain to assessors that the previous year's exemption will be deducted from the current year's new construction roll as provided in House Bill 519.

**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 not conducted because the changes were of a simple nature.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

Standards published by the International Association of Assessing Officers, NADA valuation guides, Railway Equipment Register, and the Bureau of Land Management's mapping technical bulletin and survey instruction manual are being incorporated by reference into these rules to give it the force and effect of law and because republishing the document in the rule would be unduly cumbersome and expensive due to its length and format.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Alan Dornfest (208) 334-7742.

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 close of business October 24, 2012.

DATED this 31 day of August, 2012.

Alan Dornfest  
Tax Policy Supervisor  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7742

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0103-1207**

**000. LEGAL AUTHORITY (RULE 000).**

In accordance with Section 63-105 and 63-105A, Idaho Code, the State Tax Commission shall promulgate rules implementing the provisions of the Idaho Statutes relating to the property tax laws and related statutes, Chapters 1 through ~~22~~ 17 and Chapters 28, 30, ~~and~~ 35, 36, and 45, Title 63, Idaho Code. Rules relating to the market value of recreational vehicles are authorized by Section 49-44~~56~~, Idaho Code. Rules relating to taxation of newly constructed improvements are authorized by Section 63-105A, Idaho Code. ~~(7-1-98)~~(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**003. ADMINISTRATIVE APPEALS (RULE 003).**

This chapter does allow administrative relief of certain provisions outlined herein. These rules relate to proceedings pursuant to Sections 63-~~112~~407 and 63-7~~40~~7, Idaho Code. ~~(7-1-93)~~(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**006. INCORPORATION BY REFERENCE (RULE 006).**

Unless provided otherwise, any reference in these rules to any document identified in Rule 006 of these rules 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 adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-3-03)

**01. Availability of Reference Material.** Copies of the documents incorporated by reference into these rules are available at the main office of the State Tax Commission as listed in Rule 005 of these rules or can be electronically accessed as noted in Subsection 006.02 of this rule. (5-8-09)

**02. Documents Incorporated by Reference.** The following documents are incorporated by reference into these rules: (5-3-03)

**a.** “Standard on Ratio Studies” published in 2010, “Standard on Digital Cadastral Maps and Parcel Identifiers” published in ~~2009~~2012, ~~and~~ “Standard on Mass Appraisal of Real Property” published in 201~~7~~2, “Standard on Verification and Adjustment of Sales” published in 2010, all published by the International Association of Assessing Officers. These documents can be electronically accessed at <http://www.iaao.org/documents/index.cfm?Category=23> which was last accessed and verified on ~~July~~ June 18~~4~~, 201~~7~~2. (~~3-29-12~~)(    )

**b.** “Recreation Vehicle Guide of the National Automobile Dealers Association” published in 201~~7~~2 for the September through December period by the National Appraisal Guides Incorporated. (~~3-29-12~~)(    )

**c.** “Van/Truck Conversion and Limousine Appraisal Guide of the National Automobile Dealers Association” published in 201~~7~~2 for the September through December period by the National Appraisal Guides Incorporated. (~~3-29-12~~)(    )

**d.** “Official Railway Equipment Register” published for the last three (3) quarters in 201~~7~~2 and the first quarter in 201~~2~~3 by R. E. R. Publishing Corporation, Agent as a publication of UBM Global Trade. (~~3-29-12~~)(    )

**e.** “Forest Habitat Types of Northern Idaho: A Second Approximation” published by the Government Printing Office for the U. S. Forest Service in 1991, General Technical Report INT-236, written by Cooper, Stephen V., Neiman, Kenneth E., Rev, David W., and Roberts, Kenneth E. (4-6-05)

**f.** “Forest Habitat Types of Central Idaho” published by the Government Printing Office for the Intermountain Forest and Range Experimentation Station of the U. S. Forest Service in 1981, General Technical Report INT-114, written by Kittams, Jay A., Pfister, Robert D., Ryker, Russell A., and Steele, Robert. (5-3-03)

**g.** “Yield of Even-Aged Stands of Ponderosa Pine” published by the Government Printing Office for the U. S. Department of Agriculture in 1938, Technical Bulletin No. 630. (5-3-03)

**h.** “Second-Growth Yield, Stand, and Volume Table for the Western White Pine Type” published by the Government Printing Office for the U. S. Department of Agriculture in 1932, Technical Bulletin No. 323. (5-3-03)

**i.** “Manual of Surveying Instructions ~~for the Survey of the Public Lands of the United States~~” published by the ~~Government Printing Office for the~~ Federal Bureau of Land Management and the Public Land Survey System Foundation in ~~1973, Technical Bulletin No. 6~~ 2009. (~~5-3-03~~)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**



**225. DOCUMENTATION FOR NEWLY ORGANIZED OR ALTERED TAXING DISTRICTS OR REVENUE ALLOCATION AREAS (RAAS) UNDER THE JURISDICTION OF URBAN RENEWAL AGENCIES (RULE 225).**

Sections 31-1411, 50-2907, 50-2908, 63-215, 63-807, 63-1202, 63-3029B, and 63-3638, Idaho Code. (3-30-07)

**01. Definitions.** The following definitions apply for cities, taxing districts, or revenue allocation areas (RAAs) under the jurisdiction of urban renewal agencies being organized or formed or altering boundaries. (3-15-02)

**a. Taxing Districts.** The term taxing districts as used in this rule means taxing districts and taxing units. (3-15-02)

**b. Alter.** Alter or any derivatives of the word as used in Section 63-215, Idaho Code, means annex, deannex, or consolidate or derivatives of these words. (3-15-02)

**c. Contiguous.** Contiguous means being in actual contact or touching along a boundary or at a point and is synonymous with abutting on. (3-15-02)

**d. Deannex.** Deannex means to delete or remove a portion but not all of a boundary for a city, taxing district, or RAA by completing all legal requirements to establish a new boundary for the city, taxing district or RAA. (4-6-05)

**e. Disincorporate.** Disincorporate or any derivatives of the word as used in Section 63-3638, Idaho Code, means completing all legal requirements to end the existence of a city. (4-6-05)

**f. Dissolve.** Dissolve or any derivatives of the word as used in Section 63-3638, Idaho Code, means completing all legal requirements to end the existence of a taxing district or RAA. (4-6-05)

**g. Legal Description.** Legal description means a narrative that describes by metes and bounds a definite boundary of an area of land that can be mapped on a tax code area map and shall include: (3-15-02)

i. Section, township, range and meridian. (3-15-02)

ii. An initial point, being a government surveyed corner, such as a section corner, quarter corner or mineral survey corner. (3-15-02)

iii. A true point of beginning, defined by bearings and distances from the initial point, that begins a new city, taxing district, RAA or any alteration thereto. (3-15-02)

iv. Bearings and distances that continuously define the boundary of any area with a closure accuracy of at least one (1) part in five thousand (5,000). Variations from this closure requirement may be approved by the State Tax Commission if the description is sufficiently certain and accurate to ensure that the property is assigned to the proper tax code area. Such variations may include: (3-15-02)

(1) Boundaries which follow mountain ranges, rivers, highways, lakes, canals and other physical features that are clearly delineated on published U.S. Geological Survey quadrangle maps at scale 1:24,000; or (3-15-02)

(2) References to cardinal directions, government survey distances, and section or aliquot part corners; or (3-15-02)

(3) References to recorded subdivision or town site plats, with copies of such plats; or (3-15-02)

(4) Legislatively established boundaries as defined by reference to Idaho Code sections. (3-15-02)

v. The legal description to annex to or deannex from an existing city, taxing district, or RAA shall plainly and clearly define the boundary lines of the deannexed or annexed area and include a reference to existing boundaries where contiguous. (3-15-02)

- h.** Map Prepared in a Draftsman-like Manner. Map prepared in a draftsman-like manner means an original graphic representation or precise copy matching the accompanying legal description and drafted to scale using standard mechanical drawing instruments or a computer. The map shall include: (3-15-02)
- i.** Section, township, range, and meridian identifications. (3-15-02)
  - ii.** North arrow, bar scale, and title block. (3-15-02)
  - iii.** District name and ordinance number or order date. (3-15-02)
  - iv.** Bearing and distance annotation between boundary points or a legend or table identifying the bearing and distance between each set of boundary points. (3-15-02)
  - v.** Clearly defined boundary lines of the newly formed city, taxing district, or RAA or of the alteration to an existing one together with reference to the existing boundary where contiguous. (3-15-02)
  - vi.** Variations from the requirements of Paragraph 225.01.h. of this rule for what must be included on the map may be approved by the State Tax Commission if the map is sufficiently certain and accurate to ensure that the property is assigned to the proper tax code area. (4-6-05)
- i.** Countywide taxing district. A countywide taxing district is a taxing district having the same boundaries as one (1) or more counties. (5-8-09)

**02. Documentation to Be Filed for Newly Created or Altered Cities, Taxing Districts, or RAAs.**

The following documentation shall be filed with the county assessor, county recorder, and the State Tax Commission no later than thirty (30) days following the effective date of any action creating or altering a city, taxing district, or RAA boundary, but no later than January 10 of the following year when any action creating or altering said boundary occurs after December 10. (3-15-02)

- a.** A legal description which plainly and clearly defines the boundary of a newly formed city, taxing district, or RAA or the boundary of an alteration to an existing one. (3-15-02)
- b.** A copy of a map prepared in a draftsman-like manner or a record of survey as defined by Chapter 19, Title 55, Idaho Code, which matches the legal description. (4-5-00)
- c.** A copy of the ordinance or order effecting the formation or alteration. (4-5-00)
- d.** For fire districts annexing territory within an existing fire district and/or city, a copy of the written approval from that existing fire district and/or city. (3-30-07)
- e.** In cases where newly created taxing district boundaries are countywide a copy of the ordinance or order effecting the formation which clearly states that the newly formed district is to be countywide shall fulfill the requirements of documents to be filed in Paragraphs 225.02.a. through 225.02.c. of this rule. (5-8-09)

**03. Documentation to Be Filed for Disincorporated Cities or Dissolved Taxing Districts, or RAAs.**  
(3-15-02)

- a.** No later than thirty (30) days following the effective date of the final action disincorporating a city or dissolving a taxing district or RAA, but no later than January 10 of the following year when the final action occurs after December 10, for the distributions of revenue as provided for in Sections 50-2908, 63-1202, 63-3029B and 63-3638, Idaho Code, the disincorporating or dissolving entity shall file a copy of the ordinance or order causing the disincorporation or dissolution with the county assessor, county recorder and the State Tax Commission. ~~If the disincorporating or dissolving entity can provide a map showing the last known boundaries of the entity, this map should accompany the ordinance or order.~~ (4-6-05) ( )
- b.** Upon receipt of the ordinance or order ~~without an accompanying map of the boundaries~~ from a

disincorporating city or dissolving taxing district, or RAA, the State Tax Commission shall prepare and send a list of the affected tax code area number(s) ~~and send a copy of a map showing the affected tax code area(s)~~ to the city, taxing district, or urban renewal agency and to the appropriate assessor(s) and recorder(s) within thirty (30) days except for any ordinance or order received after January 1 when the list ~~and map~~ shall be sent by the fourth Friday of January. (3-15-02)(    )

**c.** After fourteen (14) days from the date of the mailing of the list of the affected tax code area(s), the State Tax Commission shall process the disincorporation or dissolution unless it receives a response from the disincorporating city, or dissolving taxing district, appropriate urban renewal agency, appropriate recorder(s) or appropriate assessor(s) that an error exists in the identification of the tax code area(s). (3-15-02)

**d.** For RAAs formed prior to July 1, 2011, within thirty (30) days of the earlier of one (1) year prior to any dissolution date found in the formation ordinance or the date as of which an RAA has been in existence for twenty-three (23) years, the State Tax Commission will notify the urban renewal agency of the date by which the RAA will be considered dissolved. Such notice shall include a statement indicating that the RAA may remain in existence if necessary to pay off existing bonded indebtedness, provided that, within thirty (30) days of receipt of this notice, the urban renewal agency notifies the State Tax Commission of such bonded indebtedness. Failure to provide notice of the dissolution date by the State Tax Commission to the urban renewal agency does not negate the statutory requirement for the urban renewal agency to dissolve. (3-29-12)

**e.** For RAAs formed beginning July 1, 2011, the notification procedures in Paragraph 225.03.d. of this rule shall be initiated within thirty (30) days of the earlier of one (1) year prior to any dissolution date found in the formation ordinance or the date as of which an RAA has been in existence for twenty (20) years. (3-29-12)

**04. Digital Map Information.** Digital map information in a format usable by the State Tax Commission may be submitted in addition to or as a substitute for any cloth, film, or paper copy maps. Such information shall be accompanied by metadata that clearly defines map projection, datum and attributes. (3-15-02)

**05. Deadline for Completion.** December 31 of the current year shall be the deadline for completing of any action that creates, alters, or dissolves any taxing district or RAA or creates, alters or disincorporates any city requiring a revision of the State Tax Commission's tax code area maps for the following year, unless the law provides otherwise. (3-15-02)

**06. Approval of Property Tax Levy or Revenue Allocation.** For the purpose of levying property taxes or receiving revenue allocations no newly formed or altered city, taxing district, or RAA shall be considered formed or altered by the State Tax Commission if it: (3-15-02)

**a.** Fails to provide the correct documentation plainly and clearly designating the boundaries of a newly formed city, taxing district, or RAA or of an alteration to an existing one; or (3-15-02)

**b.** Fails to provide the correct documentation in sufficient time for the State Tax Commission to comply with Rule 404 of these rules; or (4-5-00)

**c.** Has boundaries which overlap with like cities, taxing districts or RAAs. (3-15-02)

**d.** Has had one (1) previous annexation on or after July 1, 2011 and is requesting to annex additional area. In this case, the annexation request will be denied, and the area of the RAA established prior to the new annexation will be considered to comprise the entire RAA. (3-29-12)

**07. Notification of Approval or Disapproval.** The State Tax Commission shall send a letter of approval or disapproval to the taxing district or municipality. A copy of said letter shall be submitted to any affected urban renewal agency and the auditor(s) and assessor(s) of the involved county(ies). In the case of disapproval said letter will state the reason(s) for disapproval, the corrective action(s) needed for approval, and the time within which such corrective action(s) must be taken. The State Tax Commission shall send such letter within thirty (30) days of receipt of the document to which the disapproval relates, but not later than the fourth Friday of January except during the first quarter of the calendar year for documents relating to the next tax year. (4-6-05)

**08. One Uniform System.** The State Tax Commission will prepare one (1) uniform system of tax code area numbers and maps which shall be used by each county for property tax purposes. (4-5-00)

**09. Tax Code Areas.** The State Tax Commission shall create a separate, unique number for each tax code area. If any area annexed to an existing RAA includes a taxing district with any fund levying prior to January 1, 2008, and continuing to levy but which is not to be used to generate funds to be distributed to an urban renewal agency, the boundaries of the area added to the existing RAA shall constitute a separate tax code area. Only the State Tax Commission shall initiate or change a tax code area number. (5-8-09)

**10. Furnished By The State Tax Commission.** (3-29-12)

**a.** Annually, the State Tax Commission will post the following documents on the State Tax Commission's website: (3-29-12)

i. Updated tax code area maps: (3-29-12)

ii. Updated taxing district maps; (3-29-12)

iii. Updated urban renewal revenue allocation area maps; and (3-29-12)

iv. Documentation of changes related to the above maps. (3-29-12)

**b.** This information is available to all parties. Upon specific request, the State Tax Commission will furnish without charge, one (1) hardcopy set of the above documents to each appropriate assessor, recorder, treasurer, and entity with operating property assessed by the State Tax Commission. There shall be a charge for all other hardcopy maps. (3-29-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**313. ASSESSMENT OF TRANSIENT PERSONAL PROPERTY (RULE 313).**  
Sections 63-213, 63-313, and 63-602KK, Idaho Code. (5-8-09)

**01. Definitions.** The following definitions apply for the assessment of transient personal property. (5-3-03)

**a.** Home County. Home county is identified in Section 63-313, Idaho Code, as the county selected by the owner of any transient personal property as that county where that transient personal property is usually kept. That county selected by the owner shall be a county in the state of Idaho. (5-3-03)

**b.** Periods of Thirty (30) Days or More. Periods of thirty (30) days or more mean increments of no less than thirty (30) consecutive, uninterrupted days, during which any transient personal property is located in any one (1) county. For any period of less than thirty (30) days, the property owner shall report the transient personal property as being in the home county, ~~resulting in that transient personal property being assessed in the home county for the entire year or the entire portion of the year the property has been in taxable status and not been outside the state of Idaho.~~ (5-3-03) ( )

**c.** Prorated Assessment. Prorated assessment means the ratio of the number of days, exceeding twenty-nine (29), to three hundred sixty-five (365) days multiplied by the total market value of the transient personal property. For additional clarification, refer to the following examples. (5-3-03)

i. If located in a second Idaho county (not the home county) for twenty-nine (29) consecutive, uninterrupted days and in the home county for the remainder of the year, the transient personal property should be assessed for the total market value in the home county. (5-3-03)

ii. If located in a second Idaho county (not the home county) for fifty-nine (59) consecutive,

uninterrupted days and in the home county for the remainder of the year, the transient personal property should be assessed for fifty-nine/three hundred sixty-five (59/365) of the total market value in the second county and for three hundred six/three hundred sixty-five (306/365) of the total market value in the home county. (5-3-03)

iii. If located in a second Idaho county (not the home county) for thirty-one (31) consecutive, uninterrupted days, in a third Idaho county (not the home county) for fifty-nine (59) consecutive, uninterrupted days, and in the home county for the remainder of the year, the transient personal property should be assessed for thirty-one/three hundred sixty-five (31/365) of the total market value in the second county, fifty-nine/three hundred sixty-five (59/365) of the total market value in the third county, and two hundred seventy-five/three hundred sixty-five (275/365) of the total market value in the home county. (5-3-03)

iv. If located in a second Idaho county (not the home county) for twenty-nine (29) consecutive, uninterrupted days and later in that same county for twenty-nine (29) consecutive, uninterrupted days and in the home county for the remainder of the year, the transient personal property should be assessed for the total market value in the home county. (5-3-03)

v. If located in a second Idaho county (not the home county) for fifty-nine (59) consecutive, uninterrupted days, outside the state of Idaho for any thirty-five (35) days and taxed in the other state, and in the home county for the remainder of the year, the transient personal property should be assessed for fifty-nine/three hundred sixty-five (59/365) of the value in the second county and for two hundred seventy-one/three hundred sixty-five (271/365) of the total market value in the home county. However, if the property in this example that was outside the state of Idaho for thirty-five (35) days was not taxed in the other state, then the time should be counted in the home county, and the property therefore should be assessed for three hundred six/three hundred sixty-five (306/365) of the total market value in the home county. ~~(5-3-03)~~( )

**d.** Transient Personal Property. Transient personal property is defined in Section 63-201, Idaho Code. (5-3-03)

**02. Overassessment Prohibited.** Section 63-213, Idaho Code, prohibits the assessment of any property in any one (1) county for the same period of time that property has been assessed in another county. The sum of the assessments of transient personal property in the home county and each other county where the property has been located shall not exceed the market value of the property. (5-3-03)

**03. Nontaxable Transient Personal Property.** (3-20-04)

**a.** Transient Personal Property in Transit. Under Subsection 63-313(4), Idaho Code, any transient personal property only in transit through the home county or any other county and not remaining in any county for the purpose of use is not subject to property taxation. (3-20-04)

**b.** Sold Transient Personal Property on Which Taxes Have Been Paid. Under Subsection 63-313(4), Idaho Code, any transient personal property, which was sold by the owner in the home county and upon which the full current year's property taxes were paid, is not subject to property taxation for the current year in any other county regardless of whether that property is to be used in or only in transit through any other county. (3-20-04)

**c.** Qualified Investment Exemption. For information and directions relating to the qualified investment exemption, see Rule 988 of these rules. (3-20-04)

**04. Exempt Transient Personal Property.** (5-8-09)

**a.** Section 63-602KK, Idaho Code, when applicable provides for exemption of each eligible taxpayer's personal property to the extent of one hundred thousand dollars (\$100,000) within each county. The limit on the exemption shall apply to the sum of the taxpayer's non-transient personal property and transient personal property. Prior to applying the exemption, transient personal property shall be allocated among the counties based on the prorated value as provided in Subsection 63-313(2), Idaho Code. (5-8-09)

**b.** In cases where the taxpayer has transient personal property located in multiple places within the county, the taxpayer may elect the location of the property to which the exemption will apply. Should the taxpayer not

make an election as to where to apply the exemption, the county shall have discretion regarding the property to which the exemption shall apply. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**404. OPERATOR'S STATEMENT -- CONTENTS (RULE 404).**

Sections 63-401 and 63-404, Idaho Code.

(5-3-03)

**01. Operator's Statement.** In the operator's statement, the number of miles of railroad track, electrical and telephone wire, pipeline, etc., must be reported to the hundredth mile in decimal form (0.00) in each taxing district or taxing authority and must be reported by the uniform tax code area method. (7-1-99)

**02. Tax Code Area Maps.** By March 1 of each year, the State Tax Commission shall furnish to all entities having operating property within the state of Idaho, except private railcar fleets, a list of all changes in tax code area boundary lines. In case the State Tax Commission receives corrections to any tax code area boundaries, these changes must be furnished by March 15. Every day that the tax code area map deadline is extended beyond March 1 allows for an automatic operator's statement extension equal to the delay. The reporting entity shall review the list of changes to identify any tax code areas, within which any of the entity's operating property is located. The reporting entity shall report, under Subsection 404.01 of this rule based on these identified tax code areas. The State Tax Commission shall provide the tax code areas maps to the reporting entity as provided for in Rule 225 of these rules. (5-3-03)

**03. Reporting of Mileage.** The following procedures apply for reporting mileage. (7-1-99)

**a. Railroad Track Mileage.** The railroad track mileage shall be reported by the name of the main line and branch lines with the track mileage for the main line and branch lines reported as Main Track Miles. Track miles consisting of passing track, yard switching, spurs, sidings, etc., shall be reported as Secondary Track Miles. (5-3-03)

**b. Electric Power Line Mileage.** The electric power companies shall report electric power line mileage by transmission and distribution lines. The transmission lines are the lines at a primary source of supply to change the voltage or frequency of electricity for the purpose of its more efficient or convenient transmission; lines between a generating or receiving point and the entrance to a distribution center or wholesale point; and lines whose primary purpose is to augment, integrate, or tie together the sources of power supply. The distribution lines are the lines between the primary source of supply and of delivery to customers, which are not includible in transmission lines. Cooperative electrical associations may include lines designed to accommodate thirty-four thousand five hundred (34,500) volts or more as transmission or distribution lines. Transmission or distribution lines shall be reported by single linear wire mile. (5-3-03)

**c. Telephone Wire Mileage.** All telephone wire mileage shall be reported on a single linear wire mile basis, and include any ground wires. (5-3-03)

**d. Natural Gas Pipeline and Gathering Line and Water Distribution Pipeline Mileage.** Beginning January 1, 2013, all natural gas and water distribution companies shall report pipeline and gathering line miles on a three (3) inch comparison basis. For example, a company with five (5) miles of six (6) inch pipe will report ten (10) pipeline miles: five (5) times six (6) divided by three (3) equals ten (10) miles. ~~(5-3-03)~~( )

**e. Transmission Pipeline Mileage.** All transmission pipeline companies shall report pipeline miles on a one-inch (1") comparison basis. (4-2-08)

**04. Situs Property.** Situs property includes microwave stations and radio relay towers. This property also includes facilities, used for and in conjunction with thermal generation of electricity, constructed after January 1, 2004, and located in or within five (5) miles of an incorporated city. The investment in this property shall be reported in the tax code area(s), within which it is located. (4-2-08)

**05. Record of Property Ownership.** The following procedures apply for maintaining records of operating property ownership. (7-1-99)

**a.** STC Form R. A record of each property owned, leased, or otherwise operated by each railroad, private railcar fleet or public utility shall be maintained by the State Tax Commission, the appropriate railroad, private railcar fleet or public utility, and the appropriate county assessor's office. Each record shall be maintained on a form identified as STC Form R. The State Tax Commission shall send a copy of each STC Form R to the appropriate company and the appropriate county assessor's office. (7-1-99)

**b.** Identification of Operating Property and Nonoperating Property. On the STC Form R, the State Tax Commission shall identify which property is operating property and which property is nonoperating property. (5-3-03)

**c.** Filing of Property Ownership by Railroad Companies. Each railroad company shall file the original railroad right-of-way maps with the State Tax Commission. Each railroad shall file an STC Form R, only, for property that is acquired, leased, or transferred between operating and nonoperating status, or sold during the prior year. (7-1-99)

**06. Filing Date for Operator's Statement.** By April 30 each year, each railroad, private railcar fleet, and or public utility operating in Idaho shall file information pertinent to the entity's ownership and operation with the State Tax Commission. This information must be reliable for preparing an estimate of market value. For each entity submitting a written request for an extension on or before April 30, the State Tax Commission may grant an extension of the filing date until May 31. An automatic extension beyond April 30 may be granted as set out in Subsection 404.02 of this rule. (4-6-05)

**07. Cross Reference.** For information relating to the exemption of certain intangible personal property, see Section 63-602L, Idaho Code, and Rule 615 of these rules. For valuation, allocation, and apportionment information, see Section 63-405, Idaho Code, and Rule 405 of these rules. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**509. CITY, COUNTY, SCHOOL DISTRICT, AND SPECIAL DISTRICT OR UNIT OF GOVERNMENT ABSTRACTS OF VALUE AND IDENTIFICATION OF URBAN RENEWAL INCREMENT AND PARTIAL EXEMPTION VALUES (RULE 509).**  
Sections 63-105A and 63-509, Idaho Code. (3-30-07)

**01. Definitions.** The following definitions apply for the purposes of testing for equalization under Section 63-109, Idaho Code, notification under Sections 63-301 and 63-308, Idaho Code, and reporting under Section 63-509, Idaho Code. (3-30-07)

**a.** Increment Value. Increment value means, as defined in Section 50-2903, Idaho Code, the total value calculated by summing the differences between the current equalized value of each taxable property in the revenue allocation area and that property's current base value on the base assessment roll, provided such difference is positive. (3-30-07)

**b.** Primary Category. Primary category means the categories established and described by Subsections 130.02 through 130.06 of these rules and used by the State Tax Commission to test for equalization under Section 63-109, Idaho Code. (3-30-07)

**c.** Secondary Category. Secondary category means the categories established and described by Rules 510, 511, and 512 of these rules and used by county assessors to list property values on the valuation assessment notice under Sections 63-301 and 63-308, Idaho Code, and report values to the State Tax Commission under Section 63-509, Idaho Code, and this Rule. Secondary categories may also be tested for equalization purposes, provided they meet the criteria in Subsection 131.05 of these rules. (3-29-12)

**02. Indicate Increment and Exemption Values.** In addition to the value of exemptions required under Section 63-509, Idaho Code, any increment value and the value of any exemption provided under Sections 63-

602W(4), 63-602GG, 63-602HH, 63-602II, 63-602KK, 63-602NN, 63-4502, 63-606A, and 63-3029B, Idaho Code, shall be indicated and subtracted from the taxable value shown for each secondary category of property on each city and county abstract, and the Boise School District abstract. Increment value and the value of the exemptions found in this subsection shall also be indicated and subtracted from the taxable value for each secondary category subject to taxation by special districts and units of government which do not levy property tax against all otherwise taxable property. ~~(3-29-12)~~( )

**03. Submittal of Corrections to Erroneous Abstracts or Related Documents.** When completing the procedures set forth in Section 63-810, Idaho Code, boards of county commissioners should submit the corrections to the taxable values submitted on the abstracts or related documents under provisions of Section 63-509, Idaho Code, and this rule, no later than when they submit the corrected levies under Section 63-810, Idaho Code. (4-2-08)

**04. Cross Reference.** See Rule 115 of these rules for requirements to submit city, Boise School District, and special district or unit of government abstracts. For the descriptions of the categories used to test for equalization, see Subsections 130.02 through 130.06 of these rules. For descriptions of secondary categories used to list and report land values, see Rule 510 of these rules, used to list and report the value of improvements, see Rule 511 of these rules, or used to list and report all property values other than that for land or improvements, see Rule 512 of these rules. For information relating to notification of corrections to erroneous levies, see Sections 63-809 and 63-810, Idaho Code, and Rule 809 of these rules. (3-29-12)

**510. SECONDARY CATEGORIES FOR LAND - LISTING AND REPORTING (RULE 510).**

Section 63-509, Idaho Code. County assessors will use the secondary categories described in the following subsections, indicated by numbers, to list land values on the valuation assessment notices under Sections 63-301 and 63-308, Idaho Code. County assessors will use these secondary categories described in the following subsections, indicated by numbers, and the secondary categories described in the following paragraphs, indicated by letters, to report land values to the State Tax Commission on the abstracts under Section 63-509, Idaho Code, and Rule 509 of these rules. For all of the above listed functions, assign all appropriate secondary land categories to parcels of property put to multiple uses. (4-2-08)

**01. Secondary Category 1 - Irrigated Agricultural Land.** Irrigated land and only such irrigated land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) Only place land meeting the definition of "land actively devoted to agriculture" under Section 63-604, Idaho Code, or the requirements for "wildlife habitat" or "conservation agreement" under Section 63-605, Idaho Code, for the current assessment year in this secondary category. This irrigated land must be capable of and normally producing harvestable crops and may be located inside or outside the boundaries of a subdivision without restrictions on such use or the boundaries of an incorporated city. (3-30-07)

**02. Secondary Category 2 - Irrigated Grazing Land.** Irrigated land and only such irrigated land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) Only place land meeting the definition of "land actively devoted to agriculture" under Section 63-604, Idaho Code, or the requirements for "wildlife habitat" or "conservation agreement" under Section 63-605, Idaho Code, for the current assessment year in this secondary category. This irrigated land must be used for grazing and not normally capable of producing harvestable crops and may be located inside or outside the boundaries of a subdivision without restrictions on such use or the boundaries of an incorporated city. (3-30-07)

**03. Secondary Category 3 - Non-Irrigated Agricultural Land.** Land and only such land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) Only place land meeting the definition of "land actively devoted to agriculture" under Section 63-604, Idaho Code, or the requirements for "wildlife habitat" or "conservation agreement" under Section 63-605, Idaho Code, for the current assessment year in this secondary category. This non-irrigated land must be capable of and normally producing harvestable crops without man-made irrigation and may be located inside or outside the boundaries of a subdivision without restrictions on such use or the boundaries of an incorporated city. (3-30-07)

**04. Secondary Category 4 - Meadow Land.** Land and only such land eligible for and granted the



partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) Only place land meeting the definition of "land actively devoted to agriculture" under Section 63-604, Idaho Code, or the requirements for "wildlife habitat" or "conservation agreement" under Section 63-605, Idaho Code, for the current assessment year in this secondary category. This meadow land must be capable of lush production of grass and may be located inside or outside the boundaries of a subdivision without restrictions on such use or the boundaries of an incorporated city. (3-30-07)

**05. Secondary Category 5 - Dry Grazing Land.** Land and only such land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) Only place land meeting the definition of "land actively devoted to agriculture" under Section 63-604, Idaho Code, or the requirements for "wildlife habitat" or "conservation agreement" under Section 63-605, Idaho Code, for the current assessment year in this secondary category. This land must be capable of supporting grasses and not normally capable of supporting crops on regular rotation and may be located inside or outside the boundaries of a subdivision without restrictions on such use or the boundaries of an incorporated city. (3-30-07)

**06. Secondary Category 6 - Productivity Forestland.** All land and only such land designated by the owner for assessment, appraisal, and taxation under Section 63-1703(a), Idaho Code, for the current year's assessment roll. This land must be assessed as forest land under the productivity option and may be located inside or outside the boundaries of an incorporated city. Also included is all land assessed under Section 63-1704, Idaho Code. (3-30-07)

**07. Secondary Category 7 - Bare Forestland.** All land and only such land designated by the owner for assessment, appraisal, and taxation under Section 63-1703(b), Idaho Code, for the current year's assessment roll. This land must be assessed as bare land with the yield tax option and may be located inside or outside the boundaries of an incorporated city. (3-30-07)

**08. Secondary Category 8 - ~~Speculative Homesite.~~** ~~No value shall be reported in this category on any abstract submitted to the State Tax Commission after the property roll, subsequent property roll, and missed property roll abstracts have been submitted for calendar year 2005. Not presently used.~~ (3-30-07)( )

**09. Secondary Category 9 - Patented Mineral Land.** All land used solely for mines and mining claims and only the part of such land not used for other than mining purposes for the current year's assessment roll. This land may be located inside or outside the boundaries of an incorporated city. See Section 63-2801, Idaho Code. (3-30-07)

**10. Secondary Category 10 - Homesite Land.** Rural non-subdivided land being utilized for homesites with secondary categories 1 through 9. Note: This land is always land with improvements located on it since land with no improvements should be in one (1) or more of categories 1 through 9. (4-2-08)

**11. Secondary Category 11 - Recreational Land.** Rural land used in conjunction with recreation but not individual homesites. (3-30-07)

**a. Secondary Category 11 - Vacant Recreational Land.** Vacant rural land used for recreational purposes but not individual homesites or in a properly recorded subdivision. (3-30-07)

**b. Secondary Category 11 - Improved Recreational Land.** Rural land with improvements, including exempt improvements, used for recreational purposes on that land but not individual homesites or in a properly recorded subdivision. (3-30-07)

**12. Secondary Category 12 - Rural Residential Tracts.** Rural residential land not in a properly recorded subdivision. (3-30-07)

**a. Secondary Category 12 - Vacant Rural Residential Tracts.** Vacant rural land used for residential purposes but not in a properly recorded subdivision. (3-30-07)

**b. Secondary Category 12 - Improved Rural Residential Tracts.** Rural land with improvements, including exempt improvements, used for residential purposes on that land but not in a properly recorded subdivision.

(3-30-07)

**13. Secondary Category 13 - Rural Commercial Tracts.** Rural commercial land not in a properly recorded subdivision. (3-30-07)

**a.** Secondary Category 13 - Vacant Rural Commercial Tracts. Vacant rural land used for commercial purposes but not in a properly recorded subdivision. (3-30-07)

**b.** Secondary Category 13 - Improved Rural Commercial Tracts. Rural land with improvements, including exempt improvements, used for commercial purposes on that land but not in a properly recorded subdivision. (3-30-07)

**14. Secondary Category 14 - Rural Industrial Tracts.** Rural industrial land not in a properly recorded subdivision. (3-30-07)

**a.** Secondary Category 14 - Vacant Rural Industrial Tracts. Vacant rural land used for industrial purposes but not in a properly recorded subdivision. (3-30-07)

**b.** Secondary Category 14 - Improved Rural Industrial Tracts. Rural land with improvements, including exempt improvements, used for industrial purposes on that land but not in a properly recorded subdivision. (3-30-07)

**15. Secondary Category 15 - Rural Residential Subdivisions.** Rural residential land in a properly recorded subdivision. (3-30-07)

**a.** Secondary Category 15 - Vacant Rural Residential Subdivisions. Vacant rural land used for residential purposes and in a properly recorded subdivision. (3-30-07)

**b.** Secondary Category 15 - Improved Rural Residential Subdivisions. Rural land with improvements, including exempt improvements, used for residential purposes on that land and in a properly recorded subdivision. Also use this category for rural homesites within subdivisions when the remaining acreage qualifies as actively devoted to agriculture under Section 63-604, Idaho Code, or has been designated forestland under Chapter 17, Title 63, Idaho Code. (4-2-08)

**16. Secondary Category 16 - Rural Commercial Subdivisions.** Rural commercial land in a properly recorded subdivision. (3-30-07)

**a.** Secondary Category 16 - Vacant Rural Commercial Subdivisions. Vacant rural land used for commercial purposes and in a properly recorded subdivision. (3-30-07)

**b.** Secondary Category 16 - Improved Rural Commercial Subdivisions. Rural land with improvements, including exempt improvements, used for commercial purposes on that land and in a properly recorded subdivision. (3-30-07)

**17. Secondary Category 17 - Rural Industrial Subdivisions.** Rural industrial land in a properly recorded subdivision. (3-30-07)

**a.** Secondary Category 17 - Vacant Rural Industrial Subdivisions. Vacant rural land used for industrial purposes and in a properly recorded subdivision. (3-30-07)

**b.** Secondary Category 17 - Improved Rural Industrial Subdivisions. Rural land with improvements, including exempt improvements, used for industrial purposes on that land and in a properly recorded subdivision. (3-30-07)

**18. Secondary Category 18 - Other Land.** Land not compatible with other secondary categories. (3-30-07)

- a.** Secondary Category 18 - Vacant Other Land. Vacant land not compatible with other secondary categories. (3-30-07)
- b.** Secondary Category 18 - Improved Other Land. Land with improvements, including exempt improvements, on that land but not compatible with other secondary categories. (3-30-07)
- 19. Secondary Category 19 - Waste.** Public Rights-of-Way includes roads, ditches, and canals. Use this secondary category to account for total acres of land ownership. Only list acres, not value, in this secondary category on the abstract. (3-30-07)
- 20. Secondary Category 20 - Residential Lots or Acreages.** Land used for residential purposes and inside city limits. (3-30-07)
- a.** Secondary Category 20 - Vacant Residential Lots Or Acreages. Vacant land used for residential purposes and inside city limits. (3-30-07)
- b.** Secondary Category 20 - Improved Residential Lots Or Acreages. Land with improvements, including exempt improvements, used for residential purposes on that land and inside city limits. Also use this category for urban homesites when the remaining acreage qualifies as actively devoted to agriculture under Section 63-604, Idaho Code, or has been designated forestland under Chapter 17, Title 63, Idaho Code. (4-2-08)
- 21. Secondary Category 21 - Commercial Lots or Acreages.** Land used for commercial purposes and inside city limits. (3-30-07)
- a.** Secondary Category 21 - Vacant Commercial Lots Or Acreages. Vacant land used for commercial purposes and inside city limits. (3-30-07)
- b.** Secondary Category 21 - Improved Commercial Lots Or Acreages. Land with improvements, including exempt improvements, used for commercial purposes on that land and inside city limits. (3-30-07)
- 22. Secondary Category 22 - Industrial Lots or Acreages.** Land used for industrial purposes and inside city limits. (3-30-07)
- a.** Secondary Category 22 - Vacant Industrial Lots Or Acreages. Vacant land used for industrial purposes and inside city limits. (3-30-07)
- b.** Secondary Category 22 - Improved Industrial Lots Or Acreages. Land with improvements, including exempt improvements, used for industrial purposes on that land and inside city limits. (3-30-07)
- 23. Secondary Category 25 - Common Area Vacant Land.** Common area vacant land not included in individual property assessments. (3-30-07)
- 24. Secondary Category 45 - Utility System Vacant Land.** Vacant land used for locally assessed utility systems not under the jurisdiction of the State Tax Commission for appraisal. (3-30-07)
- 25. Secondary Category 57 - Equities In Vacant Land Purchased From the State.** For identification purposes under Section 63-211, Idaho Code, vacant land purchased from the state under contract. (3-30-07)
- 26. Secondary Category 81 - Exempt Land.** Category 81 is for county use to keep an inventory, including acreage, of exempt land. (3-30-07)
- 27. Cross Reference.** For descriptions of secondary categories used to list values for improvements, see Rule 511 of these rules, or used to list property values other than that for land or improvements, see Rule 512 of these rules. For the descriptions of primary categories and the assignment of secondary categories therein, see Subsections 130.02 through 130.06 of these rules. (3-30-07)

**511. SECONDARY CATEGORIES FOR IMPROVEMENTS - LISTING AND REPORTING (RULE 511).**

Section 63-509, Idaho Code. County assessors will use the following secondary categories to list improved property values on the valuation assessment notice under Sections 63-301 and 63-308, Idaho Code, and to report improved property values to the State Tax Commission on the abstracts under Section 63-509, Idaho Code, and Rule 509 of these rules. For all of the above listed functions, assign all appropriate secondary improvement categories to parcels of property put to multiple uses. (4-2-08)

**01. Secondary Category 25 - Common Area Land and Improvements.** Common area land and improvements on that land not included in individual property assessments. (3-30-07)

**02. Secondary Category 26 - Residential Condominiums.** Land and improvements included in individual assessments of condominiums or townhouses and used for residential purposes. (3-30-07)

**03. Secondary Category 27 - Commercial or Industrial Condominiums.** Land and improvements included in individual assessments of condominiums and used for commercial or industrial purposes. (3-30-07)

**04. Secondary Category 30 - Improvements.** Improvements, other than residential, located on secondary category 20. (3-30-07)

**05. Secondary Category 31 - Improvements.** Improvements used for residential purposes and located on secondary category 10. (3-30-07)

**06. Secondary Category 32 - Improvements.** Improvements, other than residential, located on secondary categories 1 through 12 and 15. (3-30-07)

**07. Secondary Category 33 - Improvements.** Improvements used in conjunction with recreation but not associated with homesites and located on secondary category 11. (3-30-07)

**08. Secondary Category 34 - Improvements.** Improvements used for residential purposes and located on secondary category 12. (3-30-07)

**09. Secondary Category 35 - Improvements.** Improvements used for commercial purposes and located on secondary category 13. (3-30-07)

**10. Secondary Category 36 - Improvements.** Improvements used for industrial purposes and located on secondary category 14. (3-30-07)

**11. Secondary Category 37 - Improvements.** Improvements used for residential purposes and located on secondary category 15. (3-30-07)

**12. Secondary Category 38 - Improvements.** Improvements used for commercial purposes and located on secondary category 16. (3-30-07)

**13. Secondary Category 39 - Improvements.** Improvements used for industrial purposes and located on secondary category 17. (3-30-07)

**14. Secondary Category 40 - Improvements.** Improvements located on secondary category 18. (3-30-07)

**15. Secondary Category 41 - Improvements.** Improvements used for residential purposes and located on secondary category 20. (3-30-07)

**16. Secondary Category 42 - Improvements.** Improvements used for commercial purposes and located on secondary category 21. (3-30-07)

**17. Secondary Category 43 - Improvements.** Improvements used for industrial purposes and located

on secondary category 22. (3-30-07)

18. **Secondary Category 44—Improvements.** ~~Taxable improvements located on otherwise exempt property under the same ownership. No later than January 1, 2008, county assessors will use the appropriate land and improvement secondary categories based on use.~~ **Not presently used.** (3-30-07)(    )

19. **Secondary Category 45 - Utility System Land and Improvements.** Locally assessed land and improvements used as utility systems and not under the jurisdiction of the State Tax Commission for appraisal. (3-30-07)

20. **Secondary Category 46 - Manufactured Housing.** Structures transportable in one (1) or more sections, built on a permanent chassis, for use with or without permanent foundation located on land under the same ownership as the manufactured home but assessed separate from the land. Include any manufactured home located on land under the same ownership as the manufactured home on which a statement of intent to declare as real property has been filed but becomes effective the following year. (3-30-07)

21. **Secondary Category 47 - Improvements to Manufactured Housing.** Additions not typically moved with manufactured housing. (3-30-07)

22. **Secondary Category 48 - Manufactured Housing.** Manufactured housing permanently affixed to land under the same ownership as the manufactured home and on which a statement of intent to declare as real property has been filed and has become effective. (3-30-07)

23. **Secondary Category 49 - Manufactured Housing.** Manufactured housing permanently affixed to leased land and on which a statement of intent to declare as real property has been filed and has become effective. (3-30-07)

24. **Secondary Category 50 - Residential Improvements on Leased Land.** Improvements used for residential purposes and located on leased land, including railroad rights-of-way under separate ownership, exempt land ~~under separate ownership~~, or any other land under different ownership than the improvements. ~~No later than January 1, 2008, county assessors will use this secondary category when the improvement is used for residential purposes and discontinue use of secondary categories 60, 61, and 62.~~ (3-30-07)(    )

25. **Secondary Category 51 - Commercial or Industrial Improvements on Leased Land.** Improvements used for commercial or industrial purposes and located on leased land, including railroad rights-of-way under separate ownership, exempt land ~~under separate ownership~~, or any other land under different ownership than the improvements. ~~No later than January 1, 2008, county assessors will use this secondary category when the improvement is used for commercial or industrial purposes and discontinue use of secondary categories 60, 61, and 62.~~ (3-30-07)(    )

26. **Secondary Category 57 - Equities in Land With Improvements Purchased From the State.** Land with the improvements on that land that are purchased from the state under contract. (3-30-07)

27. **Secondary Category 60—Improvements on Railroad Rights of Way.** ~~Improvements located on railroad rights of way under separate ownership. No later than January 1, 2008, county assessors will use secondary category 50 when the improvement is used for residential purposes or will use secondary category 51 when the improvement is used for commercial or industrial purposes.~~ **Not presently used.** (3-30-07)(    )

28. **Secondary Category 61—Improvements by Lessee Other Than Secondary Category 62.** ~~Improvements made by the tenant or lessee to landlord's property. No later than January 1, 2008, county assessors will use secondary category 50 when the improvement is used for residential purposes or will use secondary category 51 when the improvement is used for commercial or industrial purposes.~~ **Not presently used.** (3-30-07)(    )

29. **Secondary Category 62—Improvements on Exempt or Public Land.** ~~Taxable improvements, owned separately from exempt or public land on which they are located. No later than January 1, 2008, county assessors will use secondary category 50 when the improvement is used for residential purposes or will use secondary category 51 when the improvement is used for commercial or industrial purposes.~~ **Not presently used.**

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

**30. Secondary Category 65 - Manufactured Housing.** Manufactured housing not designated real property and located on exempt, rented or leased land under separate ownership. Include any manufactured home located on exempt, rented or leased land on which a statement of intent to declare as real property has been filed but becomes effective the following year. (3-30-07)

**31. Secondary Category 69 - Recreational Vehicles.** Unlicensed recreational vehicles. (3-30-07)

**32. Secondary Category 81 - Exempt Improvements.** Category 81 is for county use to keep an inventory of exempt improvements. (3-30-07)

**33. Cross Reference.** For descriptions of secondary categories used to list land values, see Rule 510 of these rules, or used to list property values other than that for land or improvements, see Rule 512 of these rules. For the descriptions of primary categories and the assignment of secondary categories therein, see Subsections 130.02 through 130.06 of these rules. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**612. PROPERTY EXEMPT FROM TAXATION -- MOTOR VEHICLES, RECREATIONAL VEHICLES, AND VESSELS PROPERLY REGISTERED (RULE 612).**

Sections 49-123, 49-401, 49-402A, 49-422, 49-432, 49-445, 49-446, and 63-602J, Idaho Code. ~~(4-11-06)~~( )

**01. Motor Vehicle Defined.** Motor vehicle means any vehicle as defined in Section 49-123(2)(g), Idaho Code, and any personal property permanently affixed to that vehicle. (4-11-06)

**02. Exempt Motor Vehicles.** Except as provided in Subsection 612.03 of this rule, any motor vehicle, as defined in Subsection 612.01 of this rule, registered for any part of the previous year under Chapter 4, Title 49, Idaho Code, is exempt from property taxation under Sections 49-401 and 63-602J, Idaho Code. (4-11-06)

**03. Taxable Vehicles.** The following registered or permitted vehicles are taxable and not eligible for the exemption under Sections 49-401 and 63-602J, Idaho Code. (4-11-06)

**a.** Any vehicle issued a permit in lieu of registration under Section 49-432, Idaho Code. (4-11-06)

**b.** Any manufactured home registered under Section 49-422, Idaho Code. (4-11-06)

**04. Exempt Permanently Affixed Personal Property.** Except as provided in Subsection 612.05 of this rule, any personal property permanently affixed to any motor vehicle registered as described in Subsection 612.02 of this rule is part of that vehicle. Hence, that permanently affixed personal property is exempt from property taxation under Section 63-602J, Idaho Code. (4-11-06)

**05. Taxable Personal Property.** The following personal property, not otherwise exempt under Chapter 6, Title 63, Idaho Code, is taxable and not eligible for the exemption under Section 63-602J, Idaho Code. (4-11-06)

**a.** Any personal property on, but not permanently affixed to, any motor vehicle registered as described in Subsection 612.02 of this rule. (4-11-06)

**b.** Any personal property on or affixed, permanently or otherwise, to any vehicle issued a permit in lieu of registration under Section 49-432, Idaho Code. (4-11-06)

**c.** Any personal property on or affixed, permanently or otherwise, to any utility trailer registered under Section 49-402A, Idaho Code. (4-11-06)

**06. Recreational Vehicles. The owner of a recreational vehicle must pay a recreational vehicle annual**

license fee as authorized by Section 49-445, Idaho Code, and as computed in accordance with Rule 020 of these rules in order to be exempt under Section 63-602J, Idaho Code. Recreational vehicles that are wider than eight and one-half (8½) feet cannot be licensed by the Idaho Department of Transportation and therefore must be included on the assessment roll. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**619. PROPERTY EXEMPT FROM TAXATION -- FACILITIES FOR WATER OR AIR POLLUTION CONTROL (RULE 619).**

**01. Exempt Property.** Only those portions of installations, facilities, machinery, or equipment which are devoted exclusively to elimination, control, or prevention of water or air pollution are exempt. The owner of the property shall annually ~~petition the assessor~~ **apply** for exemption. (7-1-97)( )

**02. Calculation of Partial Exemption.** The exemption shall not include the percentage of the value for any portion of the facility which is used for the production of marketable by-products. The exempted value is the difference between the market value of the pollution control facilities and the present value of the net income from the sale of by-products. Net income shall be determined by subtracting the expenses of sale, raw materials required to produce by-products, and transportation to F.O.B. point from gross sales of recovered by-product.

For example:

The industry capitalization rate is 10%.

The purchase price of scrubber is \$1 million with a 20 year life  
1st Year, Calculation of Exemption;

Gross sales of precipitate	\$11,000/yr.
Transport to F.O.B. point	\$100/yr.
Lime to precipitate products	\$900/yr.
Net Income	\$10,000/yr.
Present value of net income	\$85,130
Exempt Value is purchase price minus present value of net income (\$1,000,000-\$85,130)	\$914,870

Indirect costs associated with operating the scrubber such as power, maintenance, etc., are not to be deducted from gross sales to reach net income. (3-30-01)

**03. Ineligibility.** Landfills, toxic waste dumps, or storage facilities deriving revenue from processing or storing pollution or pollution by-products generated by other persons or businesses are ineligible for this exemption. (7-1-97)

**04. Filing Procedure.** ~~Petition~~ **Application** for exemption shall be ~~filed~~ **made** in the following manner: (7-1-97)( )

**a.** The property owner may obtain the ~~declaration~~ **application** forms issued by the State Tax Commission from the county assessor or the State Tax Commission. (3-30-01)( )

**b.** The property owner completes the ~~declaration~~ **application** to report an itemized listing of all installations, facilities, machines or equipment qualifying for exemption. Each component part of the system must be

identified by a brief description (e.g., Dust Collector), the date of original acquisition, dollar amount of the original cost, and the percentage of the component devoted exclusively to pollution control. The petition application must be signed by the owner or duly authorized agent. Lack of required information shall be grounds for denial.

(7-1-97)( )

c. The completed declaration application must be filed with the county assessor commissioners by March 15 for locally assessed property or with the State Tax Commission by April 30 for centrally assessed property by March 15th of each year.

(3-30-01)( )

**05. Inspection.** The county or State Tax Commission representative may inspect the property or audit the owner's records to identify components petitioned for which the exemption has been applied. Those components listed on the declaration application must be identifiable as capital assets of the property.

(3-30-01)( )

**06. Exemption Reported on Abstracts.** For locally assessed property, exempt value shall be reported on the real and personal property abstracts.

(7-1-97)( )

**07. Exemption for Portion of Water Corporation Property.** A portion of water corporation property may be exempt from taxation.

(3-30-01)

a. On or before April 30, each year, the State Tax Commission shall receive a notice from the Idaho Public Utilities Commission listing the value of the investment percentage of the total plant of each water company that is devoted exclusively to the elimination, control, or prevention of water pollution or air pollution.

(3-30-01)

b. In estimating the market value of the company for assessment purposes, the State Tax Commission will take into consideration the investment as certified by the Public Utilities Commission that such equipment bears to the total invested plant of the company.

(3-30-01)

c. The State Tax Commission will notify the water company of the estimated market value, gross assessed value, and the amount of exemption allowed under Section 63-602P, Idaho Code, on or before July 15 ~~of each current year.~~

(3-30-01)( )

d. Any person or party wishing to contest the percentage of exemption reported to the State Tax Commission by the Public Utilities Commission may submit a written request for a public hearing to the State Tax Commission by August 1 of the current tax year. The request for a hearing shall state the petitioner's grounds for contesting the percentage reported by the Public Utilities Commission. On or before the second Monday of August the State Tax Commission shall notify the petitioner of the hearing time and place.

(3-30-01)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**802. BUDGET CERTIFICATION RELATING TO NEW CONSTRUCTION AND ANNEXATION (RULE 802).**

Sections 63-802, 63-301A, 63-602W, and 63-602NN, Idaho Code. (5-8-09)

**01. Definitions.** (4-5-00)

a. "Change of Land Use Classification." "Change of land use classification" shall mean any change in land use resulting in a secondary category change and in a change in taxable land value to be reflected on the current property roll. (4-7-11)

b. "Incremental Value as of December 31, 2006." "Incremental value as of December 31, 2006" means the total of the increment values on the property roll, subsequent property roll, missed property roll, and operating property roll for the 2006 tax year. (4-7-11)

c. "Nonresidential Structure." "Nonresidential structure" shall mean any structure listed by the assessor in any secondary category not described as residential, manufactured homes, or improvements to



manufactured homes in Rule 511 of these rules.

(4-2-08)

**02. New Construction Roll Listing.** “Listing” shall mean a summary report of the net taxable value of property listed on the new construction roll. This listing shall include the taxable value of qualifying new construction throughout each taxing district or unit, but shall not include otherwise qualifying new construction, the value of which will be included in the increment value of any revenue allocation area (RAA) within any urban renewal district encompassed by the taxing district or unit. In addition, new construction related to change of land use classification, but required by section 50-2903(4) to be added to the base assessment roll, cannot be added to any new construction roll. This report is to summarize the value reported on the new construction roll by taxing district or unit. Taxing districts and units shall be listed in the same order that is used for the certification of value required pursuant to Section 63-510(1), Idaho Code. (3-29-12)

**a.** Previously allowable new construction that has never been included. When a taxing district proves new construction described by Section 63-301A(3), Idaho Code, occurred during any one of the immediately preceding five (5) years and has never been included on a new construction roll, the county assessor must list that property on the immediate next new construction roll at the value proven by the taxing district. Any such additional new construction must also be separately listed for each taxing district or unit. The taxing district has the burden of proving the new construction was omitted from a new construction roll and the value that would have been listed for that property had it been listed on the appropriate new construction roll. No taxing district shall ever be granted any increase in budget authority greater than the amount that would have resulted had the property been listed on the appropriate new construction roll. Regardless of the year that the new construction should have been listed on the appropriate new construction roll, additional budget authority resulting from new construction previously omitted from a new construction roll and listed on the current year’s new construction roll shall be permitted only if the taxing district is in compliance with the budget hearing notification requirements of Section 63-802A, Idaho Code, for the current year. (3-29-12)

**b.** Reporting the amount of taxable market value to be deducted. For each taxing district or unit, the new construction roll listing shall separately identify the total amount of taxable market value to be deducted as required in Section 63-301A(1)(f), Idaho Code. In addition to other requirements, the amount of value deducted shall never exceed the amount originally added to a new construction roll. (3-29-12)

**c.** Determining the amount of taxable market value to be deducted. The amount of taxable market value to be deducted under Section 63-301A(1)(f)(i), Idaho Code, shall be determined by the highest authority to which the assessment is ultimately appealed. Accordingly, adjustments should not be made until there has been a final decision on any appeal. In addition, the deduction for lower values resulting from appeals shall be made only for property that was placed on a new construction roll within the immediately preceding five (5) years. (3-29-12)

**03. Special Provisions for Value Increases and Decreases.** Special provisions for value increases and decreases related to change of land use classification as defined in Paragraph 802.01.a. of this rule or increases in land value resulting from loss of the exemption provided in Section 63-602W(4), Idaho Code. (~~4-7-11~~)( )

**a.** Value increases. Certain related land value increases are to be included on the new construction roll. (4-7-11)

**i.** Except as provided in Subparagraph 802.03.a.iii., increases in land value shall be reported on the new construction roll in the year in which the new category appears on the current property roll ~~provided, however, that no amount previously included shall be reported again.~~ (~~4-7-11~~)( )

**ii.** Except as provided in Subparagraph 802.03.a.iii., the increase in taxable land value to be reported shall be computed by subtracting the taxable land value, had the land remained in its previous use category, from the taxable land value in the current use category. (~~4-7-11~~)( )

**iii.** Subject to the limitations found in Paragraph 802.06.a. of this rule, increases in land value resulting from loss of the exemption provided in Section 63-602W(4), Idaho Code, shall be reported on the new construction roll in the year the exemption is lost, provided this occurs no later than June 30 of that year. If the exemption is lost after June 30 of a given year, the resulting increase in land value shall be reported on the new construction roll in the immediate following year. ( )

b. Value decreases. Certain related land value decreases are to be included on the new construction roll and subtracted from total new construction value for any taxing district. The amount of decrease in any one year shall never exceed the amount of value originally added to the new construction roll for the same property. (4-7-11)( )

i. Value decreases are to be reported only for land for which taxable market value was reduced as a result of change of land use classification or granting of the exemption for site improvements provided in Section 63-602W(4), Idaho Code, during any one (1) of the immediately preceding five (5) years and for which an increase in value due to addition of site improvements or change of land use classification during the same five-year period had been added to a new construction roll. For the site improvement exemption provided in Section 63-602W(4), Idaho Code, the five-year period shall commence with the year following the year the exemption is first granted. For example, if a parcel first received the exemption in 2012, any site improvement related addition to a new construction roll for 2008 or more recently must be subtracted from the 2013 new construction roll, unless the exemption is lost by June 30, 2013, in which case there is no subtraction and no addition to the new construction roll for the loss of this exemption. (3-29-12)( )

ii. If the current land category is the same as the category prior to the change that resulted in an addition to the new construction roll, the amount to be subtracted shall equal the amount originally added. For example, a dry grazing land parcel that would have had a value of ten thousand dollars (\$10,000) became commercial land and was assessed at fifty thousand dollars (\$50,000). The forty thousand dollar (\$40,000) difference was reported on the new construction roll in year one (1). In year two (2), the parcel is reclassified as dry grazing land and is to be assessed at fifteen thousand dollars (\$15,000). The forty thousand dollar (\$40,000) difference that was added to the year one (1) new construction roll must be deducted from the value shown on the new construction roll in year two (2). (4-7-11)

iii. If the current land category is different than the category prior to the change that resulted in an addition to the new construction roll, the amount to be subtracted shall be the lesser of the amount originally added or the amount that would have been added had the first change in land use been from the current land category. For example, a dry grazing land parcel that would have had a value of ten thousand dollars (\$10,000) became commercial land and was assessed at fifty thousand dollars (\$50,000). The forty thousand dollar (\$40,000) difference was reported on the new construction roll in year one (1). In year two (2), the parcel is reclassified as irrigated agricultural land and would have had a value in year one (1) of twenty thousand dollars (\$20,000). The amount to be subtracted from the value shown on the new construction roll in year two (2) is thirty thousand dollars (\$30,000). (4-7-11)

iv. Provided the criteria in Subparagraph 802.03.b.i. are met, ~~V~~value decreases resulting from previously included land value becoming exempt are to be reported and subtracted. (4-7-11)( )

v. Except as provided in Subparagraph 802.03.b.vi., ~~O~~only land value decreases that meet the criteria listed in Subparagraphs 802.03.b.i. or 802.03.b.iv. of this rule and include and result from a change in land secondary category can be considered. (4-7-11)( )

vi. Provided the criteria in Subparagraph 802.03.b.i. are met, land value decreases resulting from the exemption provided in Section 63-602W(4), Idaho Code, are to be subtracted from the new construction roll in the year immediately following the most recent year in which the exemption has been granted. To comply with the budget adjustments required by Section 63-802, Idaho Code, which limits taxing district budgets based on the highest amount of property tax revenue requested during the previous three (3) years, such subtraction shall be required for up to three (3) years, provided the property continues to receive the exemption. For example, a property for which five hundred thousand dollars (\$500,000) was added to the 2011 new construction roll for site improvements that were added and taxable at that time receives a five hundred thousand dollar (\$500,000) exemption pursuant to Section 63-602W(4), Idaho Code, in 2012. The property continues to receive the exemption in the same amount in 2013, but the exempt amount increases to five hundred twenty thousand dollars (\$520,000) in 2014. The property loses the exemption before June 30, 2015. However, the 2015 value of the site improvements has been determined to be only four hundred thousand dollars (\$400,000) because of market value changes. Therefore, only four hundred thousand dollars (\$400,000) in value is added as a result of the loss of the exemption. Table A shows the effect on each year's new construction roll, while Table B shows the effect on a hypothetical taxing district's maximum allowable property tax budget. ( )

vii. Table A - Effect on New Construction Roll:

<b>Table A - Effect on New Construction Roll</b>		
<u>Year</u>	<u>Occurrence</u>	<u>Effect on New Construction Roll (for that year)</u>
<u>2011</u>	<u>Site improvements added and taxable</u>	<u>+ \$500,000</u>
<u>2012</u>	<u>Site improvements exempt</u>	<u>NA (no prior year's exemption)</u>
<u>2013</u>	<u>Site improvements exempt</u>	<u>- \$500,000</u>
<u>2014</u>	<u>Site improvements exempt</u>	<u>- \$500,000</u>
<u>2015</u>	<u>Loses site improvement exemption before June 30</u>	<u>+ \$400,000</u>

( )

viii. In Table B, assume that the taxing district has a tax levy rate of zero point zero zero two five (0.0025) in 2010, a total taxable value of one hundred million dollars (\$100,000,000) in 2010 and a property tax budget in 2010 that is two hundred fifty thousand dollars (\$250,000) and was the highest of the preceding three (3) years. The total amount of new construction is the amount due to the site improvements and no other value change occurs in the district during the period shown. There are no property tax replacement monies for this district. Beginning in 2011 the taxing district levies the maximum it is allowed each year. The factor of one point zero three (1.03) shown in Table B is used to calculate the allowable three percent (3%) increase. ( )

ix. Table B - Effect on Hypothetical Taxing District's Maximum Allowable Property Tax Budget:

<b>Table B - Effect on Hypothetical Taxing District's Maximum Allowable Property Tax Budget</b>				
<u>Year</u>	<u>Occurrence</u>	<u>Effect on New Construction Roll (for that year)</u>	<u>Maximum Allowable Property Tax Budget</u>	<u>Calculations</u>
<u>2011</u>	<u>Site improvements added and taxable</u>	<u>+ \$500,000</u>	<u>\$258,750</u>	<u>(\$250,000 X 1.03) + (\$500,000 X 0.0025)</u> <u>(tax levy rate = \$258,750/ \$100,000,000 = 0.002574627)</u>
<u>2012</u>	<u>Site improvements exempt</u>	<u>NA (no prior year's exemption; no new construction value)</u>	<u>\$266,512</u>	<u>\$258,750 X 1.03</u> <u>(tax levy rate = \$266,512/ \$100,000,000 = 0.002665120)</u>
<u>2013</u>	<u>Site improvements exempt</u>	<u>- \$500,000</u>	<u>\$273,174</u>	<u>(\$266,512 X 1.03) - (\$500,000 X 0.002665120)</u> <u>(tax levy rate = \$273,174 / \$100,000,000 = 0.002731744)</u>
<u>2014</u>	<u>Site improvements exempt</u>	<u>- \$500,000</u>	<u>\$280,003</u>	<u>(\$273,174 X 1.03) - (\$500,000 X 0.002731744)</u> <u>(tax levy rate = \$280,003/ \$100,000,000 = 0.002800033)</u>

<b>Table B - Effect on Hypothetical Taxing District's Maximum Allowable Property Tax Budget</b>				
<b>Year</b>	<b>Occurrence</b>	<b>Effect on New Construction Roll (for that year)</b>	<b>Maximum Allowable Property Tax Budget</b>	<b>Calculations</b>
2015	Loses site improvement exemption before June 30	+ \$400,000	\$289,523	$(\$280,003 \times 1.03) + (\$400,000 \times 0.002731744)$ (tax levy rate = \$289,523/ \$100,400,000 = 0.002883696

( )

**04. Manufactured Housing.** “Installation” of new or used manufactured housing shall mean capturing the net taxable market value of the improvement(s) that did not previously exist within the county. (7-1-97)

**05. Partial New Construction Values.** Except as provided in Subsection 802.06 of this rule, the net taxable market value attributable directly to new construction shall be reported on the new construction roll in the tax year it is placed on the current assessment roll. Except as provided in Subsection 802.06 of this rule, any increase in a nonresidential parcel’s taxable value, due to new construction, shall be computed by subtracting the previous year’s or years’ partial taxable value(s) from the current taxable value. If any of this difference is attributable to inflation, such value, except as provided in Subsection 802.06 of this rule, shall not be included on the new construction roll.

Example: Assume a partially completed, nonresidential improvement was assessed at ten thousand dollars (\$10,000) as of January 1, 2009. The improvement was occupied February 2, 2009. Assume the ten thousand dollar (\$10,000) value was on the 2009 new construction roll. Assume that in 2010 the improvement is assessed at ninety thousand dollars (\$90,000). Assume there has been no inflation. The value that can be reported on the 2010 new construction roll is calculated as follows:

2010 Value	\$90,000
2009 Value Already Reported on New Construction Roll	<\$10,000>
2010 New Construction Roll Value (this improvement)	\$80,000

(4-7-11)

**06. Change in Status.** (4-2-08)

**a.** A previously exempt improvement which becomes taxable shall not be included on the new construction roll, unless the loss of the exemption occurs during the year in which the improvement was constructed or unless the improvement has lost the exemption provided in Section 63-602W(3) or (4), Section 63-602E(3), or Section 63-602NN, Idaho Code. For any such property, the amount that may be included on the new construction roll shall be the value of the portion of the property subject to the exemption at the time the exemption was first granted. Examples of special cases for the exemption provided in Section 63-602W(4), Idaho Code, follow: (4-7-11)( )

**i.** If the exemption is lost by June 30 of the year in which the exempt amount was to be subtracted from the new construction roll, then there shall be no subtraction, nor shall the formerly exempt amount be added, to the new construction roll, unless it had been previously subtracted from a new construction roll. For example, the property first became exempt in 2012, but lost the exemption by June 30, 2013. The 2013 new construction roll was not adjusted downward, so any previous inclusion of the exempt value would not be added in the future. Had the property lost the exemption later in 2013, there would have been a subtraction from the 2013 new construction roll and a subsequent addition to the 2014 new construction roll. ( )

**ii.** If the exemption was granted to property for which no value had been added to any new construction roll, the value of the property (site improvements) at the time the exemption was first granted may be

added to the new construction roll following loss of the exemption. ( )

**b.** Upon receipt by the State Tax Commission of a resolution recommending adoption of an ordinance for termination of an RAA under Section 50-2903(5), Idaho Code, any positive difference of the most current increment value minus the “incremental value as of December 31, 2006,” shall be added to the appropriate year’s new construction roll. When this information is received after the fourth Monday in July, this positive net increment value shall be added to the following year’s new construction roll. (4-7-11)

**c.** When a portion of an RAA is de-annexed, the following steps must be used to determine the amount to be added to the current year’s new construction roll and the amount to be subtracted from the “incremental value as of December 31, 2006.” (4-7-11)

- i.** Step 1. For the parcels in the de-annexed area, determine the December 31, 2006, increment value. (4-7-11)
- ii.** Step 2. Subtract the increment value determined in Step 1 from the most current increment value for the parcels in the de-annexed area. (4-7-11)
- iii.** Step 3. Add any positive difference calculated in Step 2 to the current year’s new construction roll value. (4-7-11)
- iv.** Step 4. Adjust the “incremental value as of December 31, 2006” for the RAA by subtracting the increment value determined in Step 1. (4-7-11)

**v.** The following table shows the amount to be added to the current year’s new construction roll and the amount to be subtracted from the “incremental value as of December 31, 2006” applicable to the adjusted remaining RAA. The table assumes an area is de-annexed from an original RAA effective December 31, 2009.

<b>Steps (as designated in Paragraph 802.06.c.)</b>	<b>Area</b>	<b>Value</b>
	December 31, 2006, increment value of the original RAA	\$10,000,000
Step 1	December 31, 2006, increment value of the de-annexed area	\$1,000,000
	December 31, 2009, increment value of the de-annexed area	\$3,000,000
Steps 2 and 3	Amount related to the de-annexed area to be added to the 2010 new construction roll	\$2,000,000
Step 4	Adjustment amount to be deducted from the original RAA’s “incremental value as of December 31, 2006”	<\$1,000,000>
	Adjusted “incremental value as of December 31, 2006” for the remaining RAA (base for future new construction roll additions upon dissolution of all or part of remaining RAA)	\$9,000,000

(4-7-11)

**07. Limitation on Annexation and New Construction Roll Value.** For any taxing district annexing property in a given year, the new construction roll for the following year shall not include value that has been included in the annexation value. When an annexation includes any part of a revenue allocation area, only taxable value that is part of the current base value of the taxing district is to be included in the annexation value reported for that taxing district for the year following the year of the annexation. (3-29-10)

**08. Notification of New Construction Roll and Annexation Values.** On or before the fourth Monday in July, each county auditor must report the net taxable values on the new construction roll and within annexed areas for each appropriate taxing district or unit to that taxing district or unit. (3-20-04)

**IDAPA 35 - IDAHO STATE TAX COMMISSION**  
**35.01.09 - TABLE AND KITCHEN WINE TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0109-1201**  
**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 63-105 and 23-1323, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

Rule 014 is being amended to reflect current Tax Commission policy and procedure regarding the types of security acceptable in place of a bond.

Rule 016 is being amended to delete outdated language requiring reports of out-of-state wholesalers and distributors.

**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 changes were of a simple nature.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact McLean Russell at (208) 334-7531.

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 close of business October 24, 2012.

DATED this 31 day of August, 2012.

McLean Russell  
Tax Policy Specialist  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7531

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0109-1201**

**014. SECURITY FOR TAX REQUIRED (RULE 014).**

**01. Security for Payment of Tax.** Each person liable for payment of the taxes provided by Chapter 13, Title 23, Idaho Code, shall at all times have in effect and on file with the State Tax Commission security for payment of the excise tax. The security shall be in the form and an amount acceptable to the State Tax Commission, shall be payable to the State Tax Commission, and shall be conditioned upon remittance of all taxes imposed on wine by this state for which such person shall be liable, including any penalty and interest. (7-1-98)

**02. Amount of Security.** The amount of the security shall be three (3) times the amount of the tax due on an average monthly wine tax return, using the previous twelve (12) month period as a base. In the case of a taxpayer who is habitually delinquent in the submission of returns or payment of the tax, the amount of the security shall be five (5) times the average monthly tax due. (7-1-98)

**03. Security Requirement Excused.** A distributor, winery, or wine direct shipper having an average wine tax liability of one hundred dollars (\$100) or less per month and having established a six (6) month history of timely filing and payment of the tax may not be required to furnish security. (3-30-07)

**04. Security for a New Distributor.** When a new distributor, winery, or wine direct shipper applies for a reporting permit number as required by Rule 015 of these rules, security may be required. (3-30-07)

**a.** If a wine tax reporting history is available from a previous ownership, the security required will be based on the most recent twelve (12) month history of the prior ownership. (7-1-93)

**b.** If there is no wine tax reporting history available from a previous ownership of the business, the new distributor, winery, or wine direct shipper shall furnish security in the amount of one thousand dollars (\$1,000), unless the taxpayer can establish to the satisfaction of the State Tax Commission that a lesser amount should apply. After a six (6) month period of filing history has been established, the security will be reviewed by the State Tax Commission and adjusted accordingly. (3-30-07)

**05. Types of Security.** A person required to post security may, ~~in lieu instead~~ of posting a surety bond, deposit with the State Tax Commission any of the following ~~amounts alternatives~~ equivalent to the amount of the ~~security bond~~ required: (7-1-98)( )

~~**a.** Bearer bonds or other similar obligations of the United States having a market value not less than the amount of the bond required and made payable to the State Tax Commission. (7-1-98)~~

~~**b.** Automatically renewable time certificates of deposit, not exceeding the federally insured amount, issued by a bank doing business in this state and insured by the Federal Deposit Insurance Corporation, made in the name of the depositor, payable to the State Tax Commission, and containing the provisions that interest earned shall be payable to the depositor. (7-1-98)~~

~~**c.** Investment certificates or share accounts, not exceeding the federally insured amount, issued by a savings and loan association doing business in this state and insured by the Federal Savings and Loan Insurance Corporation. Evidence of the insured account, either certificate or passbook, must be delivered to the State Tax Commission, along with a properly executed assignment form whereby the fund on deposit is assigned and made payable to the State Tax Commission. (7-1-98)~~

~~**d.** Irrevocable letters of credit, not exceeding the federally insured amount, issued by a bank doing business in Idaho, and insured by the Federal Deposit Insurance Corporation, made to the benefit of the State Tax Commission. The terms of the letter of credit must permit the State Tax Commission to make demand directly against the issuer of the letter of credit for any taxes, penalties, and interest due and unpaid, upon which the taxpayer's rights to appeal have expired, and for which the letter of credit was submitted to secure. (7-1-98)~~

~~**e.** Lawful money of the United States. Cash bonds must be submitted in the form of a cashier's check, money order, or other certified funds which are payable to the State Tax Commission. (7-1-98)~~

**a.** Lawful money of the United States. Cash bonds must be submitted as a cashier's check, money order, or other certified funds which are payable to the "Idaho State Tax Commission." A cash bond will not accrue interest. The State Tax Commission will cash the funds and hold the money for the duration the taxpayer holds a permit. ( )

**b.** Letters of credit. Irrevocable letters of credit, not exceeding the federally insured amount, issued by a financial institution doing business in Idaho and federally insured, made to the benefit of the "Idaho State Tax Commission." The terms of the letter of credit must allow the State Tax Commission to make demand directly against the issuer of the letter of credit for any taxes, penalties, and interest due and unpaid, upon which the taxpayer's rights to appeal have expired, and for which the letter of credit was submitted to secure. ( )

**i.** The letter must include the name of the issuing institution, taxpayer's name, effective date, expiration date and place, dollar amount covered, terms of the letter, letter number, and authorized signature. ( )

**c.** Time Certificates of Deposit (CD). Automatically renewable time certificates of deposit, not exceeding the federally insured amount, issued by a financial institution doing business in Idaho and federally insured, made in the name of the depositor, payable to the "Idaho State Tax Commission," and containing the provisions that interest earned shall be payable to the depositor. The State Tax Commission will hold the CD. If the financial institution holds the actual CD or does not issue a certificate, a verification form is required by the State Tax Commission confirming the CD. The form may be obtained from the State Tax Commission. ( )

**d.** Joint Savings Account. Joint savings accounts, not exceeding the federally insured amount, at a financial institution doing business in Idaho and federally insured. The joint savings account should be issued in the name of the taxpayer and the "Idaho State Tax Commission." Evidence of the insured account must be delivered to the State Tax Commission. The taxpayer will be notified by the State Tax Commission of any increases in bonding when it becomes necessary. The taxpayer may send a check to cover the difference which will be deposited in the joint savings account. The interest accrued on the account is the taxpayer's. The terms of the joint savings account agreement must include the following: ( )

**i.** No Automatic Teller Machine (ATM) card may be issued to the account; and ( )

**ii.** Withdrawals require both signatures of the parties of the joint account or the signature of the Idaho State Tax Commission alone. ( )

**06. Petition to Waive Security Deposit.** Other than as provided in Subsection 014.03 of this rule, a security shall be required in all instances, unless the State Tax Commission, upon petition by the taxpayer, determines after examination of the taxpayer's books and records that a security is not required. (7-1-98)

**07. Taxpayer Petition for Release from Security Requirement.** (7-1-93)

**a.** The State Tax Commission will release a taxpayer from the posting of a security if the taxpayer has filed all wine tax returns including supplemental schedules on a timely basis for the preceding twenty-four (24) month period, and the taxpayer has paid all wine tax due for the preceding twenty-four (24) month period on a timely basis. (7-1-98)

**b.** Upon petition from the taxpayer, the State Tax Commission will review the filing record of the taxpayer and, if determined necessary, within sixty (60) days examine the books and records of the taxpayer. The State Tax Commission will, no later than ninety (90) days from the date of receipt of the taxpayer's petition, advise the taxpayer of its determination and the reasons therefore. (3-30-07)

**c.** If at any time after release of a security requirement the taxpayer becomes delinquent for any period in either the filing of returns or the payment of the tax as set forth in Subsection 014.07.a. of this rule, the State Tax Commission may make immediate demand that a security be posted with the State Tax Commission. (7-1-98)

**d.** In the event that a petition for release of security is denied or a demand for posting of security is made by the State Tax Commission, notice shall be mailed to the taxpayer by certified mail. The notice shall include a statement of the reasons for the State Tax Commission's determination. If the taxpayer wishes to seek a



redetermination of the State Tax Commission's decision, he must do so by filing a petition for redetermination in the manner set forth in Section 63-3045, Idaho Code. Such a petition for redetermination must be filed no later than thirty (30) days from the date upon which the notice of determination is mailed to or served upon the claimant. (7-1-98)

e. Failure to post security upon demand, notwithstanding Subsection 014.07.d. above, will be a violation of the rules promulgated by the State Tax Commission and may be immediately reported to the Director of the Idaho State Police, together with a request or petition that the Director initiate procedures to suspend or revoke the taxpayer's license. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**016. WINE TAX RETURNS AND REPORTS (RULE 016).**

**01. Due Date of Reports.** Every person liable for the payment of taxes on wine and every person responsible for making reports to the Commission shall, on or before the 15th day of the month following the end of the reporting period, file a written report with the Commission showing all sales of wine for use or delivery within Idaho during the immediately preceding reporting period. Taxes payable with respect to such sale, distribution, or disposition shall be paid by the person liable therefor, at the time such report is filed. (3-29-10)

a. Monthly Filing Generally Required. All persons who pay wine tax are required to remit the tax to the state on a monthly basis unless a different reporting period is prescribed by the Commission. The remittance will include all wine tax due from the first through the last day of the preceding calendar month. (3-29-10)

b. Request to File Quarterly or Semiannually. Distributors or persons who owe six hundred dollars (\$600) or less per quarter and have established a satisfactory record of timely filing and payment of the wine tax may request permission to file quarterly or semiannually instead of monthly. (3-29-10)

c. Request to File Annually. Wine direct shippers, distributors, or persons who have seasonal activities may request permission to file annually. Approval of the request is at the discretion of the Commission and is limited to taxpayers who have established a satisfactory record of timely filing and payment of the tax. (3-29-10)

d. Final Report. Whenever a taxpayer who is required to file returns under the Wine Tax Act or these rules stops doing business, he must mark cancel on the last report he files. This report ends the taxable year for wine tax purposes and constitutes the taxpayer's final report of wine tax liabilities. The taxpayer must enclose his permit with his request for cancellation or send a written statement that the permit has been destroyed. If the taxpayer continues business activity after filing a final report, he may be subject to liabilities or penalties for failing to comply with the Idaho Wine Tax Act and these rules. (3-29-10)

**02. Weekend or Holiday Due Date.** For purposes of this rule, if the 15th day of any month following the end of a reporting period shall fall upon Saturday, Sunday or a legal holiday, then the due date for the report or the payment of the taxes, or both, required by this Act shall be the first business day thereafter. (3-29-10)

**03. Prescribed Forms.** (7-1-93)

a. All importers engaged in the sale or other disposition of wine imported into Idaho shall report all sales and dispositions of wine on forms either provided by or approved by the Commission. (3-29-10)

b. Distributors of wine must report all additions to and sales or dispositions out of inventory, whether taxable or tax exempt, using inventory reporting methods on forms provided by the Commission. (7-1-93)

~~e. Out-of-state wineries, vintners, producers or manufacturers of wine shall use importer's reporting forms to report sales to distributors. (7-1-93)~~

~~d.c.~~ In-state distributors, wineries, vintners, producers or manufacturers shall use Form 1752 and

related forms to report withdrawals, sales, or other dispositions from inventory. Withdrawals from inventory for the purpose of resale or consumption in, by, or through any tasting room or retail facilities owned or operated by the winery are subject to tax at the time of withdrawal from the winery's inventory. (3-30-07)

**ed.** All persons liable for wine tax must file a wine tax return provided by the State Tax Commission. The returns must show the relevant information required for computing the amount of tax due, including: (3-30-07)

- i. The name, address, telephone number and permit number of the taxpayer. (3-30-07)
- ii. Beginning and ending inventories. (3-30-07)
- iii. Wine purchases made during the reporting period. (3-30-07)
- iv. Exempt sales and transfers including sales to in-state and out-of-state wholesalers and sales to military or liquor dispensaries. (3-30-07)
- v. Purchases and sales of wine in odd size containers. (3-30-07)
- vi. Spoilage. (3-30-07)
- vii. Total taxable gallons. (3-30-07)
- viii. Credits from previous periods, if any. (3-30-07)
- ix. Total tax due. (3-30-07)
- x. Penalty and interest due, if any. (3-30-07)

**04. Requirements of a Valid Return.** A tax return or other documents required to be filed in accordance with Section 23-1322, Idaho Code, and this rule must meet the conditions prescribed below. Those which fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be redone in accordance with these requirements and refiled. A taxpayer who does not file a valid return will be considered to have filed no return. A taxpayer's failure to properly file in a timely manner may cause certain penalties to be imposed by Sections 63-3030A, 63-3046, and 63-3075, Idaho Code, and the State Tax Commission Administration and enforcement rules, IDAPA 35.02.01, "Sales and Use Tax Rules." (3-30-07)

**a.** All wine tax return forms must be completed and copies of all pertinent supporting schedules or computations must be attached. The results of supporting computations must be carried forward to applicable lines on the wine tax return form. (7-1-93)

**b.** All wine tax returns or other documents filed by the taxpayer must include his wine tax permit number and Federal Taxpayer Identification Number in the space provided. (7-1-93)

**c.** A wine tax return that does not provide sufficient information to compute a tax liability does not constitute a valid wine tax return. (7-1-93)

**d.** Perfect accuracy is not a requirement of a valid return, even though each of the following conditions is required it must be on the proper form, as prescribed by the State Tax Commission; it must contain a computation of the tax liability and sufficient supporting information to demonstrate how that result was reached; and it must show an honest and genuine effort to satisfy the requirement of the law. (3-30-07)

## IDAPA 35 - IDAHO STATE TAX COMMISSION

### 35.01.10 - IDAHO CIGARETTE AND TOBACCO PRODUCTS TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0110-1201

#### 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 63-105, 63-2501, and 63-2553, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

Rule 017 is being amended to reflect current Tax Commission policy and procedure regarding the types of security acceptable in place of a bond.

**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 changes were of a simple nature.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact McLean Russell at (208) 334-7531.

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 close of business October 24, 2012.

DATED this 31 day of August, 2012.

McLean Russell  
Tax Policy Specialist  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7531

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0110-1201

**017. SECURITY FOR TAX REQUIRED (RULE 017).**

**01. Security for Payment of Taxes.** Every wholesaler liable for payment of cigarette taxes provided by Chapter 25, Title 63, Idaho Code, shall at all times have in effect and on file with the State Tax Commission security for payment of the excise tax. The security shall be in the form and amount acceptable to the State Tax Commission, shall be payable to the State Tax Commission, and shall be conditioned upon remittance of taxes imposed on cigarettes by this state for which such wholesaler shall be liable, including any penalty and interest.

(7-1-98)

**a.** The amount of the security shall be at least two (2) times the amount of the tax due on an average monthly cigarette tax return, using the previous twelve (12) month period as a base, but in no case shall be less than one thousand dollars (\$1,000).

(3-20-04)

**b.** If a wholesaler wishes to hold an inventory of unused Idaho cigarette stamps in excess of the limitations set by Rule 015 of these rules, the wholesaler must increase the amount of the security on file with the State Tax Commission accordingly, or pay a deposit to the State Tax Commission for future taxes due which exceed the limitations.

(3-20-04)

**c.** Example: A wholesaler has an average monthly tax liability of two thousand dollars (\$2,000). The wholesaler is required by the State Tax Commission to post a security in the amount of four thousand dollars (\$4,000). The wholesaler wishes to hold an unused Idaho cigarette stamp inventory of ten thousand eight hundred dollars (\$10,800). The wholesaler must increase the amount of the security on file with the State Tax Commission by six thousand eight hundred dollars (\$6,800), or pay a deposit of six thousand eight hundred dollars (\$6,800) to be applied to future tax due to the State Tax Commission.

(7-1-98)

**02. Reviewing Security on File.** The State Tax Commission will review the amount of security on file periodically, but no less than annually, and may increase or decrease the amount of the required security in accordance with the increase or decrease of the wholesaler's average monthly tax liability.

(7-1-98)

**03. New Wholesaler Application.** When a new wholesaler applies for a cigarette wholesaler's permit, as provided by Section 63-2503, Idaho Code, the security required will be determined as follows:

(7-1-93)

**a.** If a cigarette tax reporting history is available from a previous ownership of the business, the new wholesaler shall furnish security based on the most recent twelve (12) month history of the prior ownership.

(7-1-93)

**b.** If there is no cigarette tax reporting history available from a previous ownership of the business, the new wholesaler shall furnish security in the amount of an estimated two (2) month tax liability of the new firm, or one thousand dollars (\$1,000), whichever is greater. The estimate shall be prepared by the new wholesaler and shall be subject to review and approval by the State Tax Commission.

(7-1-98)

**04. Types of Security.** A ~~wholesaler~~ person required to post security may, ~~in lieu~~ instead of posting a surety bond, deposit with the State Tax Commission any of the following alternatives equivalent to the amount of the ~~security~~ bond required.

(7-1-98)(    )

~~**a.** Bearer bonds or other similar obligations of the United States having a market value not less than the amount of the bond required and made payable to the State Tax Commission.~~

(7-1-98)

~~**b.** Automatically renewable time certificates of deposit, not exceeding the federally insured amount, issued by a bank doing business in this state and insured by the Federal Deposit Insurance Corporation, made in the name of the depositor, payable to the State Tax Commission, and containing the provisions that interest earned shall be payable to the depositor.~~

(7-1-98)

~~**c.** Investment certificates or share accounts, not exceeding the federally insured amount, issued by a savings and loan association doing business in this state, and insured by the Federal Savings and Loan Insurance Corporation. Evidence of the insured account, either certificate or passbook, must be delivered to the State Tax Commission, along with a properly executed assignment from whereby the fund on deposit is assigned and made~~

~~payable to the State Tax Commission.~~

~~(7-1-98)~~

~~d. Irrevocable letters of credit, not exceeding the federally insured amount, issued by a bank doing business in Idaho, and insured by the Federal Deposit Insurance Corporation, made to the benefit of the State Tax Commission. The terms of the letter of credit must permit the State Tax Commission to make demand directly against the issuer of the letter of credit for any taxes, penalties, and interest due and unpaid, upon which the taxpayer's rights to appeal have expired, and for which the letter of credit was submitted to secure.~~

~~(7-1-98)~~

~~e. Lawful money of the United States. Cash bonds must be submitted in the form of a cashier's check, money order, or other certified funds which are payable to the State Tax Commission.~~

~~(7-1-98)~~

a. Lawful money of the United States. Cash bonds must be submitted as a cashier's check, money order, or other certified funds which are payable to the "Idaho State Tax Commission." A cash bond will not accrue interest. The State Tax Commission will cash the funds and hold the money for the duration the taxpayer holds a permit.

( )

b. Letters of credit. Irrevocable letters of credit, not exceeding the federally insured amount, issued by a financial institution doing business in Idaho and federally insured, made to the benefit of the "Idaho State Tax Commission." The terms of the letter of credit must allow the State Tax Commission to make demand directly against the issuer of the letter of credit for any taxes, penalties, and interest due and unpaid, upon which the taxpayer's rights to appeal have expired, and for which the letter of credit was submitted to secure.

( )

i. The letter must include the name of the issuing institution, taxpayer's name, effective date, expiration date and place, dollar amount covered, terms of the letter, letter number, and authorized signature.

( )

c. Time Certificates of Deposit (CD). Automatically renewable time certificates of deposit, not exceeding the federally insured amount, issued by a financial institution doing business in Idaho and federally insured, made in the name of the depositor, payable to the "Idaho State Tax Commission," and containing the provisions that interest earned shall be payable to the depositor. The State Tax Commission will hold the CD. If the financial institution holds the actual CD or does not issue a certificate, a verification form is required by the State Tax Commission confirming the CD. The form may be obtained from the State Tax Commission.

( )

d. Joint Savings Account. Joint savings accounts, not exceeding the federally insured amount, at a financial institution doing business in Idaho and federally insured. The joint savings account should be issued in the name of the taxpayer and the "Idaho State Tax Commission." Evidence of the insured account must be delivered to the State Tax Commission. The taxpayer will be notified by the State Tax Commission of any increases in bonding when it becomes necessary. The taxpayer may send a check to cover the difference which will be deposited in the joint savings account. The interest accrued on the account is the taxpayer's. The terms of the joint savings account agreement must include the following:

( )

i. No Automatic Teller Machine (ATM) card may be issued to the account; and

( )

ii. Withdrawals require both signatures of the parties of the joint account or the signature of the Idaho State Tax Commission alone.

( )

**05. Taxpayer Petition for Release from Security Requirements.** A security shall be required in all instances unless the State Tax Commission, upon petition by the taxpayer, determines that a security is not required.

(7-1-98)

**a.** The following conditions must be met before the State Tax Commission will release a taxpayer from the posting of a security: The taxpayer has filed all cigarette tax returns including supplemental schedules on a timely basis for a period of not less than twelve (12) months, and the taxpayer has paid all cigarette tax due on a timely basis for a period of not less than twelve (12) months.

(7-1-98)

**b.** Upon written petition from the taxpayer, the State Tax Commission will review the filing record of the taxpayer and, if determined necessary, examine his books and records within sixty (60) days. The State Tax Commission will advise the taxpayer of its determination no later than ninety (90) days from the date of receipt of the

taxpayer's petition. (7-1-98)

**c.** If a petition for release of security is denied, notice shall be mailed to the taxpayer by certified mail. The notice shall include the reasons for the State Tax Commission's determination. If the taxpayer wishes to seek a redetermination of the decision, he must file a petition for redetermination in the manner set forth in Section 63-3045, Idaho Code. The petition for redetermination must be filed no later than thirty (30) days from the date on which the notice of determination is mailed to or served upon the claimant. (7-1-98)

**06. Failure to File Timely After Release from Security.** If a taxpayer has been released from security requirements and fails to file a cigarette tax return or fails to pay the cigarette tax due by the due date specified in Chapter 25, Title 63, Idaho Code, the State Tax Commission may immediately make demand for the tax return or payment, and demand that a security be posted. (7-1-98)

**a.** The demand shall be in writing and shall be personally served on the taxpayer or mailed to him by certified mail. (7-1-93)

**b.** If the taxpayer wishes to petition for redetermination of the demand, he must do so in writing within ten (10) days of the date upon which the demand is mailed to or served on him. (7-1-93)

**c.** Failure to file a petition for redetermination will cause the demand to become final and a jeopardy assessment will be issued. Immediate collection actions shall be taken which may include seizing all Idaho cigarette stamps held by the taxpayer, filing liens of record, seizing all cigarettes held in the inventory of the taxpayer, revoking the taxpayer's cigarette permit, or notifying the manufacturers of the cigarettes held in the taxpayer's inventory of all actions taken. (7-1-93)

**IDAPA 35 - IDAHO STATE TAX COMMISSION**

**35.01.12 - IDAHO BEER TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0112-1201**

**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 63-105 and 23-1051, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

Rule 013 is being amended to reflect current Tax Commission policy and procedure regarding the types of security acceptable in place of a bond.

Rule 017 is being amended to delete outdated language requiring reports of out-of-state wholesalers and distributors.

**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 changes were of a simple nature.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact McLean Russell (208) 334-7531.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 31st day of August, 2012.

McLean Russell  
Tax Policy Specialist  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7531

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0112-1201**

**013. SECURITY FOR TAX REQUIRED (RULE 013).**

**01. Security for Payment of Tax.** Each person liable for payment of the taxes provided by Chapter 10, Title 23, Idaho Code, shall at all times have in effect and on file with the State Tax Commission security for payment of the excise tax. The security shall be in the form and an amount acceptable to the State Tax Commission, shall be payable to the State Tax Commission, and shall be conditioned upon remittance of all taxes imposed on beer by this state for which such person shall be liable, including any penalty and interest. (7-1-98)

**02. Amount of Security.** The amount of the security shall be three (3) times the amount of the tax due on an average monthly beer tax return, using the previous twelve (12) month period as a base. In the case of a taxpayer who is habitually delinquent in the submission of returns or payment of the tax, the amount of the security shall be five (5) times the average monthly tax due. (7-1-93)

**03. Security Requirement Excused.** A wholesaler or brewery having an average beer tax liability of one hundred dollars (\$100) or less per month and having established a six (6) month history of timely filing and payment of the tax will not be required to furnish security. (7-1-93)

**04. Security for a New Wholesaler or Brewery.** When a new wholesaler or brewery applies for a reporting permit number as required by Idaho Beer Tax Administrative Rule 016, security will be required. (7-1-98)

**a.** If a beer tax reporting history is available from a previous ownership, the security required shall be based on the most recent twelve (12) month history of the prior ownership. (7-1-93)

**b.** If there is no beer tax reporting history available from a previous ownership of the business, the new wholesaler or brewer shall furnish security in the amount of one thousand dollars (\$1,000), unless the taxpayer can establish to the satisfaction of the State Tax Commission that a lesser amount should apply. After a six (6) month period of filing history has been established, the security will be reviewed by the State Tax Commission and adjusted accordingly. (7-1-98)

**05. Types of Security.** A person required to post security may, ~~in lieu instead~~ of posting a surety bond, deposit with the State Tax Commission any of the following ~~amounts alternatives~~ equivalent to the amount of the ~~security bond~~ required: (7-1-98)( )

~~**a.** Bearer bonds or other similar obligations of the United States having a market value not less than the amount of the bond required and made payable to the State Tax Commission. (7-1-98)~~

~~**b.** Automatically renewable time certificates of deposit, not exceeding the federally insured amount, issued by a bank doing business in this state and insured by the Federal Deposit Insurance Corporation, made in the name of the depositor, payable to the State Tax Commission, and containing the provisions that interest earned shall be payable to the depositor. (7-1-98)~~

~~**c.** Investment certificates or share accounts, not exceeding the federally insured amount, issued by a savings and loan association doing business in this state and insured by the Federal Savings and Loan Insurance Corporation. Evidence of the insured account, either certificate or passbook, must be delivered to the State Tax Commission, along with a properly executed assignment form whereby the fund on deposit is assigned and made payable to the State Tax Commission. (7-1-98)~~

~~**d.** Irrevocable letters of credit, not exceeding the federally insured amount, issued by a bank doing business in Idaho, and insured by the Federal Deposit Insurance Corporation, made to the benefit of the State Tax Commission. The terms of the letter of credit must permit the State Tax Commission to make demand directly against the issuer of the letter of credit for any taxes, penal ties, and interest due and unpaid, upon which the taxpayer's rights to appeal have expired, and for which the letter of credit was submitted to secure. (7-1-98)~~

~~**e.** Lawful money of the United States. Cash bonds must be submitted in the form of a cashier's check, money order, or other certified funds which are payable to the State Tax Commission. (7-1-98)~~



**a.** Lawful money of the United States. Cash bonds must be submitted as a cashier's check, money order, or other certified funds which are payable to the "Idaho State Tax Commission." A cash bond will not accrue interest. The State Tax Commission will cash the funds and hold the money for the duration the taxpayer holds a permit. ( )

**b.** Letters of credit. Irrevocable letters of credit, not exceeding the federally insured amount, issued by a financial institution doing business in Idaho and federally insured, made to the benefit of the "Idaho State Tax Commission." The terms of the letter of credit must allow the State Tax Commission to make demand directly against the issuer of the letter of credit for any taxes, penalties, and interest due and unpaid, upon which the taxpayer's rights to appeal have expired, and for which the letter of credit was submitted to secure. ( )

**i.** The letter must include the name of the issuing institution, taxpayer's name, effective date, expiration date and place, dollar amount covered, terms of the letter, letter number, and authorized signature. ( )

**c.** Time Certificates of Deposit (CD). Automatically renewable time certificates of deposit, not exceeding the federally insured amount, issued by a financial institution doing business in Idaho and federally insured, made in the name of the depositor, payable to the "Idaho State Tax Commission," and containing the provisions that interest earned shall be payable to the depositor. The State Tax Commission will hold the CD. If the financial institution holds the actual CD or does not issue a certificate, a verification form is required by the State Tax Commission confirming the CD. The form may be obtained from the State Tax Commission. ( )

**d.** Joint Savings Account. Joint savings accounts, not exceeding the federally insured amount, at a financial institution doing business in Idaho and federally insured. The joint savings account should be issued in the name of the taxpayer and the "Idaho State Tax Commission." Evidence of the insured account must be delivered to the State Tax Commission. The taxpayer will be notified by the State Tax Commission of any increases in bonding when it becomes necessary. The taxpayer may send a check to cover the difference which will be deposited in the joint savings account. The interest accrued on the account is the taxpayer's. The terms of the joint savings account agreement must include the following: ( )

**i.** No Automatic Teller Machine (ATM) card may be issued to the account; and ( )

**ii.** Withdrawals require both signatures of the parties of the joint account or the signature of the Idaho State Tax Commission alone. ( )

**06. Petition to Waive Security Deposit.** Other than as provided in Subsection 013.03 of this rule, a security shall be required in all instances, unless the State Tax Commission, upon petition by the taxpayer, determines after examination of the taxpayer's books and records that a security is not required. (7-1-98)

**07. Taxpayer Petition for Release From Security Requirement.** (7-1-93)

**a.** The State Tax Commission will release a taxpayer from the posting of a security if the taxpayer has filed all beer tax returns including supplemental schedules on a timely basis for the preceding twenty-four (24) month period, and the taxpayer has paid all beer tax due for the preceding twenty-four (24) month period on a timely basis. (7-1-98)

**b.** Upon petition from the taxpayer, the State Tax Commission will review the filing record of the taxpayer and, if determined necessary, within sixty (60) days examine the books and records of the taxpayer. The State Tax Commission will, no later than ninety (90) days from the date of receipt of the taxpayer's petition, advise the taxpayer of its determination and the reasons therefor. (7-1-98)

**c.** If at any time after release of a security requirement the taxpayer becomes delinquent for any period in either the filing of returns or the payment of the tax as set forth in Subsection 013.07.a. above, the State Tax Commission may make immediate demand that a security be posted with the State Tax Commission. (7-1-98)

**d.** In the event that a petition for release of security is denied or a demand for posting of security is made by the State Tax Commission, notice shall be mailed to the taxpayer by certified mail. The notice shall include a statement of the reasons for the State Tax Commission's determination. If the taxpayer wishes to seek a

redetermination of the State Tax Commission's decision, he must do so by filing a petition for redetermination in the manner set forth in Section 63-3045, Idaho Code. Such a petition for redetermination must be filed no later than thirty (30) days from the date upon which the notice of determination is mailed to or served upon the claimant. (7-1-98)

e. Failure to post security upon demand, notwithstanding Subsection 013.07.d. above, will be a violation of the rules promulgated by the State Tax Commission and shall be immediately reported to the Director of the Idaho State Police, together with a request or petition that the Director initiate procedures to suspend or revoke the taxpayer's license. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**017. BEER TAX RETURNS AND REPORTS (RULE 017).**

**01. Due Date of Reports.** Every person liable for the payment of taxes on beer and every person responsible for making reports to the Commission shall, on or before the fifteenth day of the month following the end of the reporting period, file a written report with the Commission showing all sales of beer for use or delivery within Idaho during the immediately preceding reporting period. Taxes payable with respect to such sale, distribution, or disposition shall be paid by the person liable therefore, at the time such report is filed. (3-29-10)

a. Monthly Filing Generally Required. All persons who pay beer tax are required to remit the tax to the state on a monthly basis unless a different reporting period is prescribed by the Commission. The remittance will include all beer tax due from the first through the last day of the preceding calendar month. (3-29-10)

b. Request to File Quarterly or Semiannually. Wholesalers or persons who owe six hundred dollars (\$600) or less per quarter and have established a satisfactory record of timely filing and payment of the beer tax may request permission to file quarterly or semiannually instead of monthly. (3-29-10)

c. Request to File Annually. Wholesalers or persons who have seasonal activities may request permission to file annually. Approval of the request is at the discretion of the Commission and is limited to taxpayers who have established a satisfactory record of timely filing and payment of the tax. (3-29-10)

d. Final Report. Whenever a taxpayer who is required to file returns under the Beer Tax Act or these rules stops doing business, he must mark cancel on the last report he files. This report ends the taxable year for beer tax purposes and constitutes the taxpayer's final report of beer tax liabilities. The taxpayer must enclose his permit with his request for cancellation or send a written statement that the permit has been destroyed. If the taxpayer continues business activity after filing a final report he may be subject to liabilities or penalties for failing to comply with the Beer Tax Act and these rules. (3-29-10)

**02. Weekend or Holiday Due Date.** For purposes of this rule, if the 15th day of any month following the end of a reporting period shall fall upon Saturday, Sunday or a legal holiday, then the due date for the report or the payment of the taxes, or both, required by this Act shall be the first business day thereafter. (3-29-10)

**03. Forms Provided or Approved by Tax Commission.** All dealers engaged in the sale or other disposition of beer imported into Idaho shall report all sales and dispositions of beer on forms either provided or approved by the Commission. (3-29-10)

**04. Inventory Reporting Methods.** Wholesalers of beer must report all additions to and sales or dispositions out of inventory, whether taxable or tax exempt, using inventory reporting methods on Wholesaler Beer Tax Returns provided by the Commission. (7-1-93)

~~**05. Out-of-State Brewers.** Out-of-state brewers of beer shall use dealer's reporting forms to report sales to wholesalers. (7-1-93)~~

**06. In-State Brewers.** In-state brewers of beer shall use wholesaler's beer tax returns to report all

withdrawals, sales, or other dispositions from inventory. Withdrawals from inventory for the purpose of resale or consumption in, by, or through any tasting room or retail facilities owned or operated by a brewery are subject to tax at the time of withdrawal from the brewer's inventory. (7-1-93)

**076. Requirements of a Valid Return.** A tax return or other documents required to be filed in accordance with Section 23-1051, Idaho Code, and this rule must meet the conditions prescribed below. Those which fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be redone in accordance with these requirements and refiled. A taxpayer's failure to properly file in a timely manner may cause certain penalties to be imposed by Sections 63-3030A, 63-3046, and 63-3075, Idaho Code, and rules thereunder. (7-1-93)

**a.** All beer tax return forms must be completed and copies of all pertinent supporting schedules or computations must be attached. The results of supporting computations must be carried forward to applicable lines on the beer tax return form. (7-1-93)

**b.** All beer tax returns or other documents filed by the taxpayer must include his beer tax permit number and Federal Taxpayer Identification Number in the space provided. (7-1-93)

**c.** A beer tax return that does not provide sufficient information to compute a tax liability does not constitute a valid beer tax return. (7-1-93)

**d.** Perfect accuracy is not a requirement of a valid return, even though each of the following conditions is required: it must be on the proper form, as prescribed by the Commission; and it must contain a computation of the tax liability and sufficient supporting information to demonstrate how that result was reached; and it must show an honest and genuine effort to satisfy the requirement of the law. (7-1-93)

**IDAPA 35 - IDAHO STATE TAX COMMISSION**  
**35.02.01 - ADMINISTRATION AND ENFORCEMENT RULES**  
**DOCKET NO. 35-0201-1201**  
**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 63-105 and 63-3039, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

Rule 225 is being modified to be consistent with Administration and Enforcement Rule 140.

Rule 310 is being amended to add the interest rate for calendar year 2013 and the Revenue Ruling where the federal rate for the calculation can be found.

Rule 500 is being amended to conform to Idaho Code section 63-3047.

Rule 704 is being amended to conform to statute allowing the exchange of information to Treasurers Office and Idaho Transportation Department.

**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 changes were of a simple nature.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cynthia Adrian (208) 334-7670.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 31st day of August, 2012.

Cynthia Adrian  
Tax Policy Specialist  
Idaho State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7670

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0201-1201**

**225. PROCEEDINGS ON LEVY OR DISTRAINT (RULE 225).**

Section 63-3060, Idaho Code.

(3-20-97)

**01. In General.** The proceedings on levy or distraint have the same force and effect as a writ of execution issued by a court on final judgment except that the right to claim exemption from execution is limited by Section 63-3058, Idaho Code. The sale or liquidation of property seized ~~shall will~~ proceed in the manner provided by the general statutes of the state of Idaho relating to execution on judgment. See Title 11, Idaho Code. ~~(3-20-97)( )~~

**02. Sale of Property.** All costs of execution and sale are the responsibility of the taxpayer and ~~shall will~~ be collected as part of the obligation owing the state. Any moneys obtained on the sale of the taxpayer's property ~~shall will~~ be applied in the following order: to costs incurred, ~~penalty,~~ interest, ~~and principal or~~ tax, ~~owing and~~ ~~penalty.~~ Any moneys received in excess of the total obligation ~~shall will~~ be paid to the taxpayer unless, prior to disbursement, other creditors file a claim on the state. See Section 11-202, Idaho Code. ~~(3-20-97)( )~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**310. INTEREST RATES (RULE 310).**

Sections 63-3045 and 63-3073, Idaho Code.

(3-20-04)

**01. In General.** The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of a calendar year is determined in accordance with Section 63-3045, Idaho Code. The rates starting with the rate applicable at July 1, 1981, and the Internal Revenue Service Revenue Rulings, if applicable for the calculation of the rate, are listed in Subsection 310.02 of this rule. These interest rates also apply to the allowance of a credit or refund of tax erroneously or illegally assessed or collected as provided in Section 63-3073, Idaho Code.

(4-6-05)

**02. Idaho Interest Rates and Applicable Revenue Rulings.**

PERIOD	RATE OF INTEREST	INTERNAL REVENUE SERVICE REVENUE RULING
July 1, 1981, through December 31, 1993	12% simple interest	Not Applicable
Calendar Year 1994	7% simple interest	Revenue Ruling 93-64
Calendar Year 1995	9% simple interest	Revenue Ruling 94-61
Calendar Year 1996	8% simple interest	Revenue Ruling 95-67
Calendar Year 1997	9% simple interest	Revenue Ruling 96-49
Calendar Year 1998	8% simple interest	Revenue Ruling 97-41
Calendar Year 1999	7% simple interest	Revenue Ruling 98-50
Calendar Year 2000	8% simple interest	Revenue Ruling 99-41
Calendar Year 2001	8% simple interest	Revenue Ruling 2000-45
Calendar Year 2002	7% simple interest	Revenue Ruling 2001-49
Calendar Year 2003	5% simple interest	Revenue Ruling 2002-61

PERIOD	RATE OF INTEREST	INTERNAL REVENUE SERVICE REVENUE RULING
Calendar Year 2004	6% simple interest	Revenue Ruling 2003-107
Calendar Year 2005	6% simple interest	Revenue Ruling 2004-69
Calendar Year 2006	6% simple interest	Revenue Ruling 2005-57
Calendar Year 2007	7% simple interest	Revenue Ruling 2006-44
Calendar Year 2008	7% simple interest	Revenue Ruling 2007-57
Calendar Year 2009	5% simple interest	Revenue Ruling 2008-46
Calendar Year 2010	5% simple interest	Revenue Ruling 2009-29
Calendar Year 2011	4% simple interest	Revenue Ruling 2010-20
Calendar Year 2012	4% simple interest	Revenue Ruling 2011-20
<u>Calendar Year 2013</u>	<u>3% simple interest</u>	<u>Revenue Ruling 2012-24</u>

~~(3-29-12)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**500. SETTLEMENTS (RULE 500).**

Sections 63-3047 and 63-3048, Idaho Code.

(3-29-10)

**01. Grounds for Settlement.** The Tax Commission may settle ~~the tax liability~~ any taxes, penalties, or ~~both~~ interest of a case if one (1) or more of the following circumstances exist: ~~(3-29-10)~~( )

**a.** Disputed liability, (3-29-10)

i. A disputed liability exists where there is a reasonable disagreement as to the existence or amount of the correct tax liability under the law. A disputed liability does not exist where the liability has been established by a final court judgment concerning the existence of the liability. (3-29-10)

ii. An offer to settle a disputed liability generally will be considered acceptable if it reasonably reflects the likelihood the Commission could expect to collect through litigation. This analysis includes consideration of the hazards and costs of litigation that would be involved if the liability were litigated. The evaluation of the hazards and costs of litigation is not an exact science and is within the discretion of the Commission. (3-29-10)

**b.** Doubt as to collectability; (3-29-10)

i. Doubt as to collectability exists in any case where the taxpayer's assets and income may not satisfy the full amount of the liability. (3-29-10)

ii. An offer to settle based on doubt as to collectability generally will be considered acceptable if it is unlikely that the tax, penalty, and interest can be collected in full and the offer reasonably reflects the amount the Commission could collect through other means, including administrative and judicial collection remedies. This amount is the reasonable collection potential of a case. In determining the reasonable collection potential of a case, the Commission will take into account the taxpayer's reasonable basic living expenses. In some cases, the Commission may accept an offer of less than the total reasonable collection potential of a case if there are special circumstances. (3-29-10)

- c.** Economic hardship of the taxpayer. (3-29-10)
- i. The Commission may settle where it determines that, although collection in full could be achieved, collection of the full amount would cause the taxpayer economic hardship. Economic hardship is defined as the inability to pay reasonable basic living expenses. (3-29-10)
- ii. An offer to settle based on economic hardship generally will be considered acceptable when, even though the tax, penalty, and interest could be collected in full, the amount offered reflects the amount the Commission can collect without causing the taxpayer economic hardship. The determination to accept a particular amount will be based on the taxpayer's individual facts and circumstances. (3-29-10)
- d.** Promotion of effective tax administration. (3-29-10)
- i. The Commission may settle to promote effective tax administration where compelling public policy or equity considerations identified by the taxpayer provide a sufficient basis for settling the liability that is equitable under the particular facts and circumstances of the case. Settlements pursuant to this paragraph will be justified only where, due to exceptional circumstances, collection of the full liability may undermine public confidence that the tax laws are being administered in a fair and equitable manner. The taxpayer will be expected to demonstrate circumstances that justify settlement even though a similarly situated taxpayer may have paid his liability in full. (3-29-10)
- ii. The State Tax Commission may decline a settlement for reasons promoting effective tax administration if the settlement of the liability would undermine compliance by taxpayers with the tax laws. (3-29-10)
- 02. Agreement Final.** A settlement agreement relates to the issues agreed to for the tax periods in question. The agreement is final and conclusive and neither the Tax Commission nor the taxpayer *shall will* be permitted to open the case again except in the case of changes to the federal return or a showing of fraud or malfeasance or misrepresentation of a material fact or as provided in the agreement. Recalculation of carryback or carryover items may not be construed as opening the case and will not affect the tax liability of a closed period or closed issue. ~~(3-29-10)~~( )
- 03. Form of Settlement.** The taxpayer must submit an offer to settle in writing. An offer may not be considered accepted until the taxpayer is notified in writing. Acceptance may be made only by a Tax Commissioner or an authorized delegate. If the offer is rejected, the Tax Commission *shall will* promptly notify the taxpayer. ~~(3-29-10)~~( )
- 04. Withdrawal of Offer.** A taxpayer may withdraw his offer to settle at any time prior to its acceptance by the Tax Commission. (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**704. DISCLOSURE OF INFORMATION: GOVERNMENT AGENCIES AND OFFICIALS (RULE 704).** Sections 23-907, 39-8405, ~~49-326~~, 50-1049, 54-1904A, 56-231, 63-602G, 63-2442, 63-3029B, 63-3077, 63-3077A, 63-3077B, 63-3077C, 63-3077D, 63-3077E, 63-3634A, and 67-4917C, Idaho Code. ~~(3-29-12)~~( )

**01. Legislature.** The Tax Commission *shall will* disclose returns or return information to the Idaho Legislature on the written request of the chair of any committee of either branch of the Idaho Legislature on behalf of the committee. When authorized by statute, the Tax Commission *shall will* disclose information to the Legislative Council, the Joint Legislative Oversight Committee, or to the Joint Finance and Appropriations Committee. ~~(3-20-97)~~( )

**02. Government Agencies or Officials.** The Tax Commission *shall will* disclose information necessary to comply with provisions of the Idaho Code requiring reports or information to be provided to government

agencies or officials. This includes the disclosure of tax returns and return information for use in enforcing child support obligations pursuant to Section 56-231, Idaho Code. ~~(3-20-97)~~( )

- 03. Exchange of Information.** Information may be exchanged between the Tax Commission and: (4-5-00)
- a.** The Internal Revenue Service, as allowed by Sections 63-3077(1)(a) and 63-3077D, Idaho Code; (3-30-07)
  - b.** Other states, if reciprocal provisions for information exchanges are granted under Section 63-3077(1)(b), Idaho Code; (5-3-03)
  - c.** County assessors, limited to: (3-20-04)
    - i.** Information relating to the taxpayer's residence or domicile and his claim of the homeowner's property tax exemption as provided in Sections 63-3077(4) and 63-602G, Idaho Code; and (4-6-05)
    - ii.** Information related to the property tax exemption claimed in lieu of the Idaho investment tax credit, as allowed by Section 63-3029B, Idaho Code. (3-20-04)
  - d.** Department of Labor, as allowed by Section 63-3077A, Idaho Code; (4-5-00)
  - e.** Industrial Commission, as limited by Section 63-3077B, Idaho Code; (4-5-00)
  - f.** Multistate Tax Commission, as allowed by Section 63-3077(1)(b), Idaho Code; (5-3-03)
  - g.** Idaho Transportation Department, relating to: (3-20-04)
    - i.** Fuels tax, as allowed by Section 63-2442, Idaho Code; and (3-20-04)
    - ii.** Residency information, as allowed by Section 63-3634A, Idaho Code. (3-20-04)
  - iii.** Tax declaration for blindness as required by Section 49-326, Idaho Code. ( )
  - h.** Financial Management Services of the U. S. Department of the Treasury, as allowed by Sections 63-3077(1)(a) and 63-3077D, Idaho Code; (3-30-07)
    - i.** Governing entity of the International Fuel Tax Agreement, IFTA, Inc., as allowed by Section 63-3077(1)(b), Idaho Code; (4-6-05)
    - j.** Department of Fish and Game, limited to information relating to an individual's place of residence or domicile, as allowed by Section 63-3077C, Idaho Code; (3-29-12)
  - k.** Attorney General, as limited by Section 39-8405, Idaho Code; (3-20-04)
  - l.** Resort cities, as allowed by Section 50-1049, Idaho Code; (4-6-05)
  - m.** Auditorium districts, as allowed by Section 67-4917C, Idaho Code; (4-11-06)
  - n.** County treasurers and boards of county commissioners, limited to information related to a claim of the homeowner's property tax exemption, as allowed by Section 63-602G, Idaho Code; and (4-11-06)
  - o.** The administrator of the Division of Building Safety, limited to information relating to public works contracts as provided in Section 54-1904A, Idaho Code. (4-11-06)
  - p.** The Alcohol Beverage Control Bureau within the Idaho State Police, as provided in Section 23-907, Idaho Code. (3-29-10)



- q. The State Treasurer, as provided in Section 63-3077E, Idaho Code, limited to: (3-29-12)
- i. The names and ~~current~~ addresses of businesses in Idaho; ~~and~~ (~~3-29-12~~)( )
- ii. The names and ~~current~~ addresses of individuals or entities identified as owners or potential owners of unclaimed property in the custody of the State Treasurer; ~~and~~ (~~3-29-12~~)( )
- iii. The taxpayer identifying numbers. ( )

# IDAPA 36 - IDAHO BOARD OF TAX APPEALS

## 36.01.01 - IDAHO BOARD OF TAX APPEALS RULES

### DOCKET NO. 36-0101-1201

#### 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 63-3808, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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 chapter is amended to simplify the Board's procedural rules through a reduction in rule language and by increasing the consistency in rule language and formatting; to delete a public witness rule (BTA Rule 86); and to make general housekeeping changes.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 changes were of simple nature.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule and how an electronic copy can be obtained or, if otherwise unavailable, where copyrighted or other proprietary materials may be obtained:

No documents have been incorporated by reference into this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve Wallace at (208) 334-3354.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 28th day of August, 2012.

Steve Wallace  
Tax Policy Specialist  
Board of Tax Appeals  
P.O. Box 83720  
Boise, ID 83720-0088  
Phone: (208) 334-3354  
Fax: (208) 334-4060

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 36-0101-1201

**000. LEGAL AUTHORITY (RULE 0).**

~~These rules are promulgated~~ in accordance with Section 63-3808, Idaho Code, ~~the Idaho Board of Tax Appeals shall promulgate rules implementing the provisions of the Idaho Statutes relating to the Board of Tax Appeals, Chapter 38, Title 63, and Chapter 52, Title 67, Idaho Code.~~ (4-5-00)(    )

**001. TITLE AND SCOPE (RULE 1).**

**01. Title.** These rules shall be cited as IDAPA 36.01.01, "Idaho Board of Tax Appeals Rules." (4-5-00)

**02. Scope.** These rules shall govern all procedures before the Idaho Board of Tax Appeals hereinafter "Board". (4-5-00)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**003. ADMINISTRATIVE APPEALS (RULE 3).**

There is no ~~provision for~~ administrative appeal ~~before the Board under this chapter.~~ A Board decision ~~s-are~~ is appealable to the district court as provided by law. (4-5-00)(    )

**004. ~~(RESERVED)~~ INCORPORATION BY REFERENCE.**

~~There are no documents incorporated by reference into this rule.~~ (    )

**005. OFFICE -- OFFICE HOURS -- ~~MAILING ADDRESSES AND STREET ADDRESS~~ (RULE 5).**

The principal office of the Board shall ~~be at Boise, Idaho and shall~~ be open each day for ~~the transaction of~~ business and filing of documents between ~~the hours of~~ 8 a.m. and 5 p.m., Saturdays, Sundays, and legal holidays excepted. The Board's mailing address, ~~unless otherwise indicated, will be~~ is Idaho Board of Tax Appeals, P.O. Box 83720, Boise, Idaho 83720-0088. The Board's street address is 3380 Americana Terrace Suite 110, Boise, Idaho 83706. The Board's telephone number is 208-334-3354 and its FAX number is 208-334-4060. (2-18-05)(    )

**006. PUBLIC RECORDS ACT COMPLIANCE (RULE 6).**

The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, ~~Chapter 3, Title 9, Chapter 3,~~ Idaho Code. Except as provided by Rule 125, ~~all~~ materials filed with the Board ~~pursuant to these rules~~ and ~~all materials~~ issued by the Board ~~pursuant to these rules~~ are public documents subject to inspection, examination and copying. (2-18-05)(    )

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

**010. DEFINITIONS (RULE 10).**

As used in this chapter: (2-18-05)

**01. Answer.** The ~~R~~esponse to allegations, requests or claims of an appeal. (2-18-05)(    )

**02. Appellant.** A party, ~~person, natural or otherwise, or governmental subdivision or agency~~ filing an appealing ~~ing to~~ with the Idaho Board of Tax Appeals. (2-18-05)(    )

**03. Board.** The Idaho Board of Tax Appeals, board members, presiding officer, or hearing officer as the context may dictate whenever it occurs in this chapter. (2-18-05)(    )

**04. Case File.** The ~~O~~fficial record maintained by the Board regarding an appeal. ~~The case file is a file folder(s) containing the documentary record including submissions from the parties, plus any recordings of hearings.~~ (2-18-05)(    )

**05. Comparable Sales.** Recently sold properties that are similar in important respects locational and physical characteristics to the property being appraised. "Recently sold property" is property with a sale date prior to

the effective date of valuation. (2-18-05)( )

**06. De Novo.** The Board will decide questions of fact and of law based on the evidence and legal arguments presented ~~in the proceedings~~ before the Board. A de novo review means the parties must present anew any previously submitted evidence or argument they wish to have considered. New evidence and argument may also be presented. (2-18-05)( )

**07. ~~Findings of Fact and Conclusions of Law.~~** ~~Concise statements of the determinations made as to contested issues of fact, and statements of the applicable law as determined by the Board which are applicable to the findings of fact.~~ Ex Parte. A communication on behalf of one (1) party with the Board where the other side is not present or included. (2-18-05)( )

**08. Intervenor.** ~~Any~~ party voluntarily intervening in an appeal who meets the intervention qualifications ~~and requirements for intervention~~ under Rule 85. (2-18-05)( )

**09. Parcel.** Each separate property ownership as represented by the county assessment rolls. (2-18-05)

**10. Party.** A person, natural or otherwise, or governmental subdivision or agency authorized to appear before the Board in any proceedings of the Board. (2-18-05)

**11. Presiding Officer or Hearing Officer.** A member of the Board; or any other person ~~who is~~ assigned to conduct a conference or hearing by for the Board. ~~The presiding officer shall have authority as provided by Rule 106.~~ (2-18-05)( )

**12. Respondent.** A party answering or otherwise responding to an appeal. (2-18-05)

**13. Subject Property.** The property under discussion. (2-18-05)

**14. Substantive Issue.** An issue where a right, interest or privilege of any party is involved that may be prejudiced as opposed to minor or mere procedural matters ~~dealt with by the Board.~~ (2-18-05)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**012. ORGANIZATION (RULE 12).**  
The Chairman of the Board shall serve as the administrative officer. (2-18-05)

**01. Election.** The Chairman shall be elected annually by the board members in consideration of experience with the Board and the member's availability to serve and support the Board's administrative duties. (2-18-05)

**02. Power.** The Chairman shall oversee the issuance of acknowledgment letters; and notices ~~of hearing, notices of show cause hearings,~~ and is authorized to perform all other procedural duties such as issuing orders on nonsubstantive rulings without a formal meeting of the Board. ~~The Chairman shall not issue any substantive orders in any case, except upon a roll call vote of the board members where a majority concurs in the result.~~ (2-18-05)( )

**013. -- 019. (RESERVED)**

**020. PROCEDURE GOVERNED (RULE 20).**

**01. Procedure.** These rules shall govern all practice and procedure before the Board ~~of Tax Appeals, hereinafter referred to in these rules as the Board.~~ Except as provided in Rules 800 through 860, these rules are affirmatively promulgated to supersede IDAPA 04.11.01, et seq., "Idaho Rules of Administrative Procedure of the Attorney General". (2-18-05)( )

**02. Purpose.** The purpose for the law providing for the establishment of the Idaho Board of Tax Appeals is to provide an independent, fair, expeditious, and less expensive opportunity for taxpayers and other parties to appeal from most tax related decisions of county boards of equalization and the State Tax Commission. (4-5-00)

**(BREAK IN CONTINUITY OF SECTIONS)**

**022. CITATION (RULE 22).**

The official citation of this chapter is IDAPA 36.01.01, ~~et seq.~~ ~~For example, this section's citation is IDAPA 36.01.01.022. In documents submitted to the Board or issued by the Board, these rules may be cited as BTA (Board of Tax Appeals) and rule number less leading zeroes. For example, this rule may be cited as BTA Rule 22. A rule section or subsection, such as this one, may be cited in either of the following formats:~~ (2-18-05)( )

**01. IDAPA Format. Section 022.** ( )

**02. BTA Format. Rule 22.** ( )

**023. -- 029. (RESERVED)**

**030. REPRESENTATION AND PRACTICE BEFORE THE BOARD (RULE 30).**

~~To the extent authorized by law~~ the right to appear and practice before the Board shall be limited ~~to the following classes of persons as follows:~~ (4-11-06)( )

**01. Natural Persons.** A natural person may represent himself or herself or be represented by an attorney. (4-11-06)

**02. Corporations.** Duly authorized directors or officers of corporations representing the corporations for which they are, respectively, directors or officers; (4-11-06)

**03. Limited Liability Company (LLC).** A duly authorized member, or a manager of a manager-managed LLC, representing the LLC for which they are, respectively, a member or manager; ( )

**034. Partnerships, Joint Ventures and Trusts.** Duly authorized partners, joint venturers, or trustees representing their respective partnerships, joint ventures or trusts; (4-11-06)

**045. Authorized Attorneys.** Attorneys duly authorized, who are qualified and entitled to practice in the courts of the state of Idaho; (4-5-00)

**056. Public Officers.** Public officers or designated representatives when representing the governmental agency; (4-11-06)

**031. INITIAL PLEADING ~~BY PARTY~~ -- LISTING OF REPRESENTATIVES (RULE 31).**

The initial pleading of each party ~~at the formal stage of a contested case~~ must name the party's **qualified** representative(s) for service of documents and shall state the representative's(s') address(es) for the purpose of receipt of all documents. ~~Unless authorized by order of the Board, no more than two (2) representatives for service of documents may be listed.~~ Service of documents on the named representative(s) is valid service upon the party for all purposes ~~in that proceeding.~~ If no person is explicitly named as ~~the party's~~ representative, the first person signing the **initial** pleading will be considered the ~~party's~~ representative. ~~The representative shall provide proof of authorization when representing another person, a corporation, partnership, joint venture, trust or governmental agency.~~ (2-18-05)( )

**032. SUBSTITUTION ~~OR WITHDRAWAL~~ OF REPRESENTATIVE (RULE 32).**

A party's representative may be changed ~~and a new representative substituted~~ by notice to the Board and to all other parties when the proceedings are not unreasonably delayed. The presiding officer may permit substitution of **a**

representatives at hearing. ~~Representatives who wish to withdraw, must immediately file a written notice of withdrawal.~~ (2-18-05)( )

**033. ~~TAKING OF APPEARANCES~~—PARTICIPATION BY TAXING AUTHORITY ~~STAFF~~ (RULE 33).**  
In ~~all~~ proceedings ~~in which the~~ where a taxing authority may participate, or in any instance where a report or recommendation of the taxing authority may be considered in reaching a decision, at the timely request of ~~any~~ party; or upon the Board's motion, an informed representative of the taxing authority shall appear at ~~any~~ hearing and be available for ~~cross~~-examination, and When such a representative is summoned, the taxing authority shall further participate in the hearing in the same manner as a party. (2-18-05)( )

**034. (RESERVED)**

**035. CONDUCT (RULE 35).**  
A party ~~to an appeal,~~ ~~or~~ representative or witness shall conduct themselves in all Board proceedings ~~before the Board~~ in an ethical, respectful, and courteous manner. (2-18-05)( )

**036. ENFORCEMENT (RULE 36).**  
The Board and each party to an appeal are responsible for the efficient, just, and speedy conduct of the formal hearing and other proceedings before the Board. Board members or the assigned hearing officer may impose sanctions on a party for delays, the failure to comply with a subpoena, or discovery order, for discovery procedure abuses, and for any other matter regarding conduct of the appeal. In imposing sanctions, the Board shall ~~be allowed to~~ use its discretion and shall may be guided by the court practices ~~of the courts~~ of this state ~~in imposing sanctions for similar offenses~~ in civil proceedings. Board sanctions shall include, but not be limited to, dismissal of an appeal or the granting of default judgment. (2-18-05)( )

**037. EX PARTE COMMUNICATIONS (RULE 37).**

**01. Prohibited Ex Parte.** Unless ~~required for the fair disposition of a matter specifically authorized by statute to be done ex parte, a presiding officer serving in a contested case~~ permitted by law, the Board shall not communicate, ~~directly or indirectly,~~ regarding any substantive issue ~~in the contested case~~ with any party, except upon notice and opportunity for all parties to participate in the communication. ( )

**02. Permitted Ex Parte.** The ~~presiding officer~~ Board may communicate ex parte with a party concerning a procedural or administrative matter, ~~s (e.g., scheduling).~~ ~~Ex parte communications from members of the general public not associated with any party are not required to be reported by this rule. When a presiding officer becomes aware of a written ex parte communication regarding any substantive issue from a party or representative of a party during a contested case, the presiding officer shall place a copy of the communication in the file for the case and distribute a copy of it to all parties of record or order the party providing the written communication to serve a copy of the written communication upon all parties of record. Written communications from a party showing service upon all other parties are not ex parte communications.~~ (2-18-05)( )

~~038.—039.~~ (RESERVED)

**040. PARTIES (RULE 40).**  
~~A party appealing to the Idaho Board of Tax Appeals shall be known as "Appellant." The party or agency answering said appeal shall be known as "Respondent." A party intervening in an appeal shall be known as "Intervenor."~~ (2-18-05)

~~041~~~~38.~~ -- 044. (RESERVED)

**045. NOTICE OF APPEAL: CONTENTS (RULE 45).**

**01. Basic Contents.** ~~All~~ An appeals ~~shall~~ must be in writing and shall contain clear and concise statements of the matters that lay ~~a~~ foundation for the relief claim that may be granted by the ~~Idaho Board of Tax Appeals.~~ All An appeals shall allege necessary facts to establish jurisdiction of the Board to hear ~~said~~ the appeal. (4-5-00)( )

- ~~012.~~ **Appeals Additional Contents.** ~~All~~ The appeals shall further contain: (4-5-00)(\_\_\_\_)
- a. Appellant's full name, mailing address and telephone number; (4-5-00)(\_\_\_\_)
  - ~~b.~~ Current mailing address; (4-5-00)(\_\_\_\_)
  - ~~eb.~~ The tax year(s) being associated with the appealed; and (4-5-00)(\_\_\_\_)
  - ~~dc.~~ The telephone number where the appellant can be reached during normal daytime business hours.  
A signed statement by a natural person/appellant or by a qualified representative that the notice of appeal contents are correct. (4-5-00)(\_\_\_\_)
- ~~023.~~ **Appeal Filed by an Attorney or Representative.** ~~If any~~ An appeal is filed by an ~~attorney or other~~ qualified representative, ~~the pleading~~ shall contain: (4-5-00)(\_\_\_\_)
- a. The ~~attorney's or~~ representative's name, official title, mailing and street addresses, telephone number; and (4-5-00)(\_\_\_\_)
  - b. If the representative is an attorney, ~~the~~ Idaho State Bar License number ~~for attorneys.~~ (4-11-06)(\_\_\_\_)
- ~~034.~~ **Board Must Be Informed of Any Changes in Address or Phone Number.** ~~A Parties and party or~~ representatives must ~~keep~~ provide written notice to the Board ~~informed~~ and other parties of any changes in ~~address or telephone number~~ contact information. (4-5-00)(\_\_\_\_)

046. NOTICE OF APPEAL: BOE APPEALS (RULE 46).

01. **Separate Notice.** ~~The party filing the appeal shall complete an Appeal Form approved by the Board, or a separate notice of appeal. A separate Appeal Form will be completed for e~~Each parcel assessment of ~~property~~ appealed must use a separate Board Appeal Form or separate notice of appeal. Blank Appeal Forms shall be provided by the Board annually to each county auditor ~~annually~~ by May 1. (2-18-05)(\_\_\_\_)
02. **Contents BOE Appeals.** ~~In the case of~~ An appeals brought under Section 63-511, Idaho Code, the notice of appeal shall contain: (2-18-05)(\_\_\_\_)
- a. A legal description of the property ~~on which the appellant is~~ relating to the appealing the valuation; (4-5-00)(\_\_\_\_)
  - b. A copy of the ~~final decision of the~~ county board of equalization's final decision, and when available, the decision's postmarked mailing envelope or any accompanying certificate of service; (2-18-05)(\_\_\_\_)
  - c. ~~The objections to the findings of the board of equalization and the basis of said objections by the appellant to include~~ For a valuation appeal, a clear declaration of the alleged market value ~~alleged by the appellant, and in the case of a~~ for the subject property. For a property tax exemption claim, the Idaho Code section(s) involved associated with the claim and a summary of the factual basis supporting why exempt status should be granted or denied; and (2-18-05)(\_\_\_\_)
  - d. A copy of the ~~county's~~ final tax assessment notice for the year in question on the property that is the subject of the assessment appeal~~ed,~~ and (2-18-05)(\_\_\_\_)
  - ~~e.~~ A statement that the appellant or qualified representative has read the notice of appeal and believes the contents to be true, followed by the person's signature, or the signature of their attorney or representative. (2-18-05)(\_\_\_\_)
03. **Time Limit and Filing Place.** ~~Appeals brought under Section 63-511, Idaho Code, must be filed within thirty (30) days after mailing of notice of a decision of the board of county commissioners sitting as a board of equalization or pronouncement of a decision if this is announced at a hearing.~~ Notice of ~~such~~ appeal, must be filed

with the county auditor in the county in which the property assessment originated. ~~Appeals filed under Section 63-511, Idaho Code, cannot be perfected by filing them directly with the Idaho Board of Tax Appeals. Appeals not timely filed as provided by statute and Rule 46 shall be dismissed.~~ (2-18-05)(\_\_\_\_)

**047. NOTICE OF APPEAL: STC APPEALS (RULE 47).**

~~01. Contents STC Appeals.~~ In An appeals brought under Section 63-3049 ~~or 63-707~~, Idaho Code, ~~the notice of appeal shall include contain:~~ (2-18-05)(\_\_\_\_)

~~a01. Attachment.~~ A copy of the ~~redetermination or final~~ written decision ~~by the State Tax Commission being~~ appealed from; (2-18-05)(\_\_\_\_)

~~b02. Objections.~~ The A list of objections ~~of the appellant to the redetermination or final~~ STC's decision; (2-18-05)(\_\_\_\_)

~~e03. Basis.~~ The basis for said objections presented in clear and concise statements; (2-18-05)(\_\_\_\_)

~~a04. Amount in Dispute.~~ A statement of the amount in dispute ~~shall be included with the notice of appeal if the amount in dispute is different from the redetermination or deficiency determination decision for each applicable tax year or period;~~ and (2-18-05)(\_\_\_\_)

~~e05. Security Deposit.~~ When applicable, ~~P~~proof of compliance with the ~~mandatory~~ deposit requirements ~~as provided~~ in Section 63-3049(b), Idaho Code, in the form of a receipt or documented acknowledgment from the ~~State Tax Commission.~~ (2-18-05)(\_\_\_\_)

~~02. Perfected Appeal—Filing Time.~~ Appeals brought under Section 63-3049, Idaho Code, ~~must be filed with the Board within ninety one (91) days after the receipt of notice of the decision of the State Tax Commission.~~ (2-18-05)

**048. ~~NOTICE OF APPEAL: DEFECTIVE APPEALS~~ ACKNOWLEDGMENT (RULE 48).**

01. Acknowledgment Letter. An acknowledgment letter will be mailed within fourteen (14) days of the receipt of an appeal in the Board's office. The Board may acknowledge multiple appeals by the same party, when the subject properties are located within a single county, with a single letter. Such acknowledgment does not constitute a formal consolidation of the appeals. (\_\_\_\_)

~~012. Amendment or Dismissal Defective Appeal.~~ Upon the filing of any notice of appeal it will be inspected by the Board and ~~if an appeal is~~ found to be materially defective, untimely, or not substantially in compliance with the requirements of this chapter the Board may dismiss such appeal or require its amendment. ~~After notice from the Board, the appellant shall have fourteen (14) days to amend and perfect such appeal. Failure to perfect the appeal may result in dismissal of the appeal without further notice.~~ (2-18-05)(\_\_\_\_)

~~02. Jurisdiction.~~ If a notice of appeal fails to set out allegations alleging jurisdiction of the Board, or if such allegations are disputed, the Board may require a separate hearing and may hear evidence on the questions of the Board's jurisdiction, or the Board may require proof of jurisdiction at the hearing of the appeal on its merits. (2-18-05)

**049. ~~NOTICE OF APPEAL: ACKNOWLEDGMENT LETTER (RULE 49).~~ (RESERVED)**

~~The Board will acknowledge receipt of a notice of appeal within fourteen (14) days of receipt of appeal in the Board's office.~~ (2-18-05)

**050. ~~NOTICE OF APPEAL: RESPONSE~~ ANSWER TO APPEAL (RULE 50).**

A respondent or intervenor may file with the Board an response answer to a notice of appeal. ~~If filed, the party filing the response~~ The answer shall be filed ~~the original with the Board~~ at least ten fifteen (105) business days prior to hearing ~~and must serve a copy thereof upon all other parties in accordance with the provisions of this chapter.~~ (4-5-00)(\_\_\_\_)



**051. ~~NOTICE OF APPEAL- FILING STC APPEALS (RULE 51): (RESERVED)~~**

~~Notices of appeal to the Board from Idaho State Tax Commission decisions and any other papers required to be filed with the Board shall be deemed filed upon actual receipt by the clerk of the Board or, if mailed, such papers shall be deemed filed as of the federal post office postmark date. Postage meters do not designate the mailing date. (2-18-05)~~

**052. ~~NOTICE OF APPEAL- FILING BOE APPEALS~~ **COUNTY AUDITOR REQUIREMENT (RULE 52).****

~~Papers, including notice of appeal, required to be filed with the county auditor shall be deemed filed upon actual receipt by the county auditor or, if mailed, such notice shall be deemed filed as of the federal post office postmark date. Postage meters do not designate the mailing date. (2-18-05)~~

**01. County Auditor Contents.** Upon receiving a notice of appeal to the Board under Section 63-511, Idaho Code, the county auditor ~~in the county where the notice of appeal is filed~~ shall ~~forward~~ **transmit** to the Board: (2-18-05)(    )

**a. A copy of ~~T~~he notice of appeal including the ~~filing~~ date of receipt, and if received by mail, a copy of the mailing envelope;** (2-18-05)(    )

**b. Any available ~~The~~ exhibits or other evidence considered by the BOE;** (2-18-05)(    )

**c. A copy of the ~~written~~ initial appeal to the BOE;** (2-18-05)(    )

**d. A copy of any decision made or action taken by the BOE together with the mailing date of the notice of decision or other proof of service; ~~and~~** (2-18-05)(    )

**e. A copy of the certified minutes of the ~~meeting(s)~~ related BOE proceeding, or a verbatim record of the BOE dealing with said appeal; ~~and~~** (2-18-05)(    )

**f. When applicable, a certificate that the BOE failed to act on the appeal in the time required.** (    )

**02. Minutes.** The minutes should include at a minimum: (2-18-05)

**a. The full name of persons appearing before the BOE in the appeal;** (2-18-05)

**b. Clear identification of the parcel~~(s)~~ number associated with the assessment~~(s)~~ appealed; ~~and~~** (4-5-00)(    )

**c. The decision made ~~or action taken~~ by the BOE ~~indicating clearly~~ specifying the value determined or exempt status decided for each parcel~~/assessment considered~~.** (4-5-00)(    )

**053. -- 054. (RESERVED)**

**055. ~~CONSOLIDATION~~ HEARINGS AND DECISIONS (RULE 55).**

**01- Appeals and Hearings.** Whenever ~~it shall appear to the Board or presiding officer that~~ two (2) or more ad valorem cases from the same county or different counties involve the same or substantially similar issues ~~as well as~~ and the same or similar property ~~classes or subclasses, such as assessment categories,~~ or where the same or similar issues exist in other tax type cases, the Board ~~or presiding officer~~ may issue a written or verbal order consolidating the cases ~~for hearing~~. There shall be no consolidation of cases where the rights of any party would be prejudiced ~~by such procedure~~. ~~Two (2) or more parties to appeals~~ **Parties** may also request in writing that cases be consolidated ~~under the same~~ using this criteria ~~listed above~~. ~~The Board or presiding officer in~~ **Prior to** issuing a consolidation order, ~~in ad valorem appeals~~ **the Board** shall consider: whether the parcels are contiguous, any response given to a consolidation request, and any other matters deemed appropriate in ~~determining the disposition of the matter. In a consolidated hearing the presiding officer determines the order of the proceeding~~ judging whether consolidation would likely be beneficial. (4-5-00)(    )

**02- Decisions.** ~~The Board may at its discretion issue a written decision in a consolidated format.~~ (4-5-00)

056. -- 059. (RESERVED)

**060. FORM OF PLEADINGS (RULE 60).**

**01. Form.** All pleadings, except those filed on Board forms, submitted by a party and intended to be part of the record shall be double-spaced throughout the text and must: (2-18-05)( )

**a.** Be submitted on white eight and one-half inch (8 1/2") by eleven inch (11") paper copied on using one (1) side only and be legibly written; (2-18-05)( )

**b.** State the title of the pleading and the appeal number if assigned, at the top of the cover page; (2-18-05)( )

**c.** Include on the upper left corner of the first page the name(s), mailing and street address(es), and if available, the telephone and FAX number(s) of the person(s) filing the document or the person(s) to whom questions about the document can be directed; (2-18-05)( )

**d.** Have at least one inch (1") left and top margins; and (2-18-05)( )

**e.** The Board may require a response from the opposing party in order to clarify the issues raised on appeal. Parties may also file a response whenever they feel such is necessary to clarify the issues raised on appeal, whether required by the Board or not; and (2-18-05)

**f.** Must be signed by the appropriate authorized party if a natural person or by any qualified representative of record submitting the same. (2-18-05)( )

**02. Example.** Documents complying with this rule will be in the following form: (2-18-05)

Name of Representative  
Mailing Address of Representative  
Street Address of Representative (if different)  
Telephone Number of Representative  
FAX Number of Representative (if there is one available)  
Attorney/Representative for (Name of Party)

BEFORE THE IDAHO BOARD OF TAX APPEALS

(Title of Proceeding) APPEAL NO.  
( ) (TITLE OF DOCUMENT)

\_\_\_\_\_ )  
 ) Appeal No(s).  
Appellant(s), )  
 ) DOCUMENT TITLE  
 )  
vs. )  
 )  
 )  
\_\_\_\_\_ )  
Respondent(s). )

(2-18-05)( )

**061. SERVICE OF DOCUMENTS (RULE 61).**

**01. Service.** ~~All notices, motion or other pleadings, exhibits, papers, orders, decisions, and all other documents of any kind submitted to the Board shall be served upon all other parties, counsel, or parties' representatives of record. Service by regular mail of such documents will be considered adequate service. If service is made by mail the papers shall be deposited in the post office properly addressed to the person to whom they are being served, with postage prepaid. Proof of such service must be filed with the Board. An affidavit or certificate of service, or acknowledgment of service will be considered adequate proof of service. Decisions or A Board notice, orders, of the Board or final decision shall be served upon both the party and a party's counsel or representative of record, if any. When a document has been filed by FAX, it must be served upon all other parties with FAX facilities by FAX and upon the remaining parties by overnight mail, hand delivery, or the next best available service if these services are not available. The presiding officer Board may direct that some or all of these documents be served on interested or affected other persons who are not parties.~~ (2-18-05)( )

**02. Proof of Service.** Every document filed with ~~and intended to be part of~~ the Board ~~record~~ must be ~~attached to or~~ accompanied by ~~proof~~ a certificate of service, ~~by the following or similar certificate:~~ The following is an example:

~~I HEREBY CERTIFY (swear or affirm) that I have this day of \_\_, served the foregoing (name(s) of document(s)) upon all parties of record in this proceeding, (by delivering a copy thereof in person: (list names)) (by mailing a copy thereof, properly addressed with postage prepaid or facsimile or hand delivery to: (list names)).~~

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this \_\_\_ day of \_\_\_\_\_, 20XX I caused to be served a true copy of the foregoing attached document by the method indicated below and addressed to each of the following:

<u>(representative's name)</u>	_____ <u>U.S. Mail, Postage Prepaid</u>
<u>(mailing address)</u>	_____ <u>Hand Delivered</u>
	_____ <u>Overnight Mail</u>
	_____ <u>Certified Mail</u>
<u>(Signature)</u>	_____
<u>(printed name of person signing)</u>	

(2-18-05)( )

**062. DEFECTIVE, INSUFFICIENT OR LATE PLEADINGS (RULE 62).**

~~A~~ Defective, insufficient, or ~~late~~ untimely pleadings may be returned or dismissed.

(2-18-05)( )

~~063. AMENDMENTS TO PLEADINGS—WITHDRAWAL OF PLEADINGS (RULE 63).~~

~~The presiding officer may allow any pleading to be amended or corrected or any omission to be supplied. Pleadings will be liberally construed, and defects that do not affect substantial rights of the parties will be disregarded. A party desiring to withdraw a pleading must file a notice of withdrawal of the pleading and serve all parties with a copy. Unless otherwise ordered by the presiding officer, the notice is effective ten (10) days after filing.~~ (2-18-05)

**063. -- 064. (RESERVED)**

**065. COMPUTATION OF TIME (RULE 65).**

In computing any period of time prescribed or allowed by these rules ~~or by any applicable statute, except where contrary to other applicable statutes~~, the day ~~of the act, event or default~~ from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included in the count unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the ~~end of the~~ next day that is not a Saturday, Sunday, or legal holiday. (2-18-05)( )

**066. FILING ~~OF DOCUMENTS~~ (RULE 66).**

**01. Document Filing Place.** A# documents# filed with the Board shall be filed with the Clerk of the Board at the Board's mailing address or street address. (2-18-05)( )

**02. Number of Copies.** Unless otherwise indicated by the Board, one (1) copy shall be filed. (2-18-05)

**03. Fax Filing.** A filing by facsimile (fax) transmission is permitted for a notice of withdrawal or settlement, and for a notice or motion requiring an immediate response by the Board. With the exception of a notice of withdrawal, an original must be mailed to the Board and served on all other parties the same day. ( )

**a.** A filing made under Rule 66.03 cannot exceed five (5) pages in length. The transmission must be legible and received in its entirety during the office hours set forth in Rule 5 for it to be considered filed on the transmission date. ( )

**b.** When making a filing by fax, if another party to the case is equipped with fax facilities, the service on that party must include fax service. ( )

**c.** The originating party shall assume the risk in fax filing and retain proof of filing by fax. ( )

**067. -- 069. (RESERVED)**

**070. PREHEARING CONFERENCES (RULE 70).**

**01. Subject of Conferences.** The Board may direct ~~the appellant, respondent, and any intervenor parties~~ to appear before it to consider: (4-5-00)( )

**a.** Any and all matters that can be agreed upon. (7-1-93)

**b.** Formulating or simplifying the issues. (4-5-00)

**c.** Stipulations which will avoid unnecessary proof. (7-1-93)

**d.** Preliminary motions to be made prior to the hearing. (7-1-93)

**e.** Requiring respondent and appellant to furnish to each other and the Board a list of all witnesses to be called by the parties at the hearing. (4-5-00)

**f.** The limitation of the number of expert or lay witnesses and the disclosure of the identity of persons having knowledge of relevant facts and who may be called as a witness. (4-5-00)

**g.** The scheduling of discovery, hearings, or other time sensitive matters. (4-5-00)

**h.** Discussing settlement. (4-5-00)

**i.** Fair hearing procedures. (4-5-00)

j. Such other matters that may expedite orderly and speedy conduct as will aid in the disposition of the controversy. (4-5-00)

**02. Notice of Prehearing Conference.** Notice of the place, date and hour of a prehearing conference will be served at least fourteen (14) days before the time set for the prehearing conference, unless the presiding officer finds it necessary or appropriate for the conference to be held earlier. Notices for prehearing conference must contain the same information as notices of hearing with regard to the Board's obligations under the American with Disabilities Act. (2-18-05)( )

**03. Failure to Appear.** Failure of either party to appear at the time and place appointed by the Board under Rule 70 may result in a dismissal of ~~that party's~~ the appeal or the granting of said appeal ~~as the case may be.~~ (2-18-05)( )

**04. Prehearing Order.** The Board or its designate may prepare or require the preparation of an order reciting the findings and action taken at such conference. ~~Such order shall supersede the pleadings and control the subsequent course of the proceeding, unless modified by the Board to prevent manifest injustice.~~ A prehearing order will control the course of subsequent proceedings unless modified by the ~~presiding officer~~ Board for good cause. (2-18-05)( )

**05. Determination Upon Results of Conference.** If, after the prehearing conference provided for in Rule 70, and after appropriate notice to the parties, the Board determines that there is sufficient evidence and stipulation upon which it can make a decision, it may ~~vacate the hearing previously set and~~ determine the appeal ~~upon such evidence and stipulations~~ without conducting a hearing. (2-18-05)( )

**071. (RESERVED)**

**072. MOTIONS (RULE 72).**

**01. Form and Contents.** A motion shall: (2-18-05)

a. Fully state the facts upon which it is based; (2-18-05)

b. Refer to the particular provision of statute, rule, order, notice, or other controlling law upon which it is based; and (2-18-05)

c. State the relief sought. (2-18-05)

**02. Oral Argument—Time for Filing.** If the moving party desires oral argument or hearing on the motion it must state so in the motion. ~~Any motion to dismiss, strike or limit an appeal must be filed before the answer is due or be included in the answer, if the movant is obligated to file an answer. If a motion is directed to an answer, it must be filed within ten (10) days after filing of the answer. Other motions may be filed at any time upon compliance with Subsection 72-03.~~ (2-18-05)( )

**03. Prehearing Motions.** ~~All~~ Unless otherwise provided in these rules, a prehearing motions must be filed at least fifteen (15) days prior to a scheduled hearing to be considered by the Board. (2-18-05)( )

**~~073. ANSWERS (RULE 73).~~**

~~**01. Answers to Pleadings Other Than Motions.** Answers to pleadings, or appeals must be filed and served on all parties of record within ten (10) days after filing of the pleading being answered, unless order or notice modifies the time within which answer may be made. When an answer is not timely filed under this rule the presiding officer may issue a notice of default. Answers to appeals must admit or deny each material allegation of the appeal. Any material allegation not specifically admitted shall be considered to be denied. Matters alleged by cross-complaint or affirmative defense must be separately stated and numbered. (2-18-05)~~

**024. Answer to Motion.** An answers to a motions may be filed ~~by persons or parties involved in the appeal. In no event is any party entitled to more than fourteen~~ within ten (14) days to respond to a motion after the

~~filing of the motion, or within the same period, a~~ move for additional time to respond ~~to a motion~~ may be filed. (2-18-05)(\_\_\_\_)

**073. (RESERVED)**

**074. BRIEFS (RULE 74).**

The Board ~~or presiding officer~~ may request order briefs from the parties ~~either~~ prior to the hearing of the evidence or after said hearing. (2-18-05)(\_\_\_\_)

**075. DISCOVERY (RULE 75).**

**01. ~~Discovery—Written Permission.~~ Parties A party to a pending appeal may engage in discovery ~~if they obtain prior~~ limited to a single discovery request upon the written ~~permission from~~ order of the ~~presiding officer~~ Board. The following procedures ~~shall will~~ govern discovery: (2-18-05)(\_\_\_\_)**

**a.** The motion for discovery must be filed within twenty (20) days of the mailing date of the Board's notice of appeal acknowledgment letter. ~~Only one (1) discovery motion may be filed by a party.~~ (2-18-05)(\_\_\_\_)

**b.** The motion ~~shall must~~ contain a ~~short plain~~ statement ~~of covering in particularity~~ the reasons the discovery is useful to the preparation of the appeal. (2-18-05)(\_\_\_\_)

**c.** The motion ~~shall must~~ be accompanied by ~~the a~~ complete copy of the discovery request. ~~The presiding officer shall deny discovery motions which do not include the complete discovery request.~~ (2-18-05)(\_\_\_\_)

**d.** Discovery ~~shall must~~ be completed at least ten (10) days prior to the scheduled hearing, unless otherwise ordered by the ~~presiding officer~~ Board. (2-18-05)(\_\_\_\_)

**e.** ~~Service upon other parties is required at the same time as filing with the Board in accordance~~ The Board may deny a discovery motion that does not fully comply with the requirements of this chapter. (2-18-05)(\_\_\_\_)

**f.** Discovery responses shall be served simultaneously ~~to on~~ all other parties ~~and the Board.~~ Supplementation of responses shall be in accordance with the Idaho Rules of Civil Procedure. At the same time, the responding party shall file with the Board a notice stating when and on whom the response was served. The actual contents of discovery responses will not be filed with the Board unless the order so directs. Discovery responses shall be signed by a qualified representative, and in the instance of interrogatory answers, the response shall also be signed by the person answering. Such signatures constitute a certification that the signer has reviewed the responses or answers and attests to their completeness and accuracy. (2-18-05)(\_\_\_\_)

**g.** The order compelling discovery may provide that voluminous answers need not be served so long as the documents are made available for inspection and copying under reasonable terms. (2-18-05)

~~**h.** The motion shall be signed by an authorized representative or a party to the appeal.~~ (2-18-05)

**02. Scope and Method of Discovery: BOE Appeals.** The method of discovery is limited to ~~Pp~~production requests and written interrogatories ~~may be submitted in accordance with the rule or order of the Board.~~ Only The scope of discovery must pertain to the subject property or any comparable sale or comparable rental. the following may be subject to discovery unless otherwise ordered by the presiding officer: (2-18-05)(\_\_\_\_)

**a.** ~~Information or records concerning appraisal and assessment of the subject property and comparable properties, financial statements and related schedules with respect to the subject property and comparable properties, sale agreements or contracts with respect to the subject property, comparable sales documents and lease agreements with respect to the subject property, completed studies or reports with respect to the subject property and comparable properties. For an exemption appeal, information or documents relating to the exemption.~~ The scope of discovery also includes the following: (2-18-05)(\_\_\_\_)

**i.** Information or records concerning an appraisal or assessment, a financial statement or related schedule, a completed study or report, and contracts including a sale agreement; (\_\_\_\_)

ii. The identity of individuals who will be called to testify as witnesses and a summary of their expected testimony; and ( )

iii. For an exemption appeal, any information or a document relating to the exemption claimed is discoverable. ( )

b. In a valuation case ~~The~~ request for production of documents or written interrogatories concerning the matters set forth above are limited to information from the last three (3) years preceding the assessment date unless otherwise specified by the Board. (2-18-05)( )

c. The request for production of documents shall specifically identify each document requested. The request for inspection of land or other property shall be in accordance with the Idaho Rules of Civil Procedure. (2-18-05)

d. The Board may limit or expand the scope and method of discovery provided by this rule when it deems such action is appropriate in a particular case. ( )

**03. Scope and Method of Discovery: STC Appeals.** (2-18-05)( )

a. Production requests, requests for admissions and written interrogatories ~~may be submitted in accordance with the rule or order of the Board~~ are permissible methods of discovery. The Board may limit the scope and method of discovery when it deems such action appropriate in a particular case. (2-18-05)( )

b. A ~~Depositions~~ may be taken in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, the Idaho Rules of Civil Procedure, or ~~rule or~~ order of the Board. (2-18-05)( )

**04. Supplementation of Response.** The party responding to a discovery order is under a continuing duty to promptly supplement an earlier response upon the availability of new information. ( )

**05. Reciprocity – Special Case.** The Board may order additional discovery not provided by this rule. ( )

~~046.~~ **Sanctions.** Failure to substantially comply with Board ordered discovery; in a good faith attempt at full compliance, may result in one or more sanctions up to and including a dismissal or default judgment of the appeal(s.) (2-18-05)( )

~~076. – 079.~~ (RESERVED)

~~080. DISCOVERY WITHOUT BOARD AUTHORIZATION (RULE 80).~~  
~~Parties may agree among themselves to provide for discovery without reference to the Board's statutes, rules of procedure, or orders.~~ (2-18-05)

~~08176. -- 084.~~ (RESERVED)

**085. INTERVENTION (RULE 85).**

**01. Intervention of Right.** Upon timely written application ~~made in writing no later than~~ received fifteen (15) days prior to the hearing of an appeal, anyone shall be permitted to intervene in an appeal when: (2-18-05)( )

a. When a A statute confers an unconditional right to intervene; and (7-1-93)( )

b. When ~~f~~The applicant claims demonstrates in writing an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest that is not adequately represented by existing parties. (4-5-00)( )

c. ~~In any appeal in which it is not a party,~~ The Idaho State Tax Commission may intervene as a matter of right. (7-1-93)( )

**02. Permissive Intervention.** Upon ~~timely~~ written application ~~made in writing no later than received~~ at least fifteen (15) days prior to the ~~date set for~~ hearing of an appeal ~~anyone~~ a person natural or otherwise may be permitted to intervene ~~in an action~~. (2-18-05)( )

~~a. The presiding officer may deny or conditionally grant petitions to intervene that are not timely filed for failure to state good cause for untimely filing, to prevent disruption, prejudice to existing parties or undue broadening of the issues, or for other reasons. Intervenor who do not file timely petitions are bound by orders and notices earlier entered as a condition of granting the untimely petition. (2-18-05)~~

~~ba.~~ When a statute confers a conditional right to intervene; ~~or~~ (7-1-93)( )

~~eb.~~ In an appeals brought under Section 63-511, Idaho Code, when an applicant can show in writing that he is a person aggrieved by the BOE decision ~~or that he is a taxpayer of the county in which said appeal was brought; or~~ (4-5-00)( )

~~dc.~~ When an applicant's claim or defense and the main action have a question of law or fact in common; or ( )

d. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or a state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency, ~~upon timely application in writing,~~ may be permitted to intervene in the action. ~~In exercising this discretion the Board shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.~~ (4-5-00)( )

e. ~~The Board may deny or conditionally grant a petition to intervene for untimely filing that fails to state good cause for the late filing, to prevent disruption or undue delay, due to prejudice to existing parties or undue broadening of the issues, or for other reasons. An intervener who does not file a timely petition is bound by orders and notices earlier entered as a condition of granting the untimely petition. ( )~~

~~**086. PUBLIC WITNESSES (RULE 86).**~~

~~Persons not parties and not called by a party who testify at hearing are called "public witnesses." Public witnesses do not have parties' rights to examine witnesses or otherwise participate in the proceedings as parties. Public witnesses' written or oral statements and exhibits are subject to examination and objection by parties. Subject to Rules 106 and 107, public witnesses have a right to introduce evidence at hearing by their written or oral statements and exhibits. (2-18-05)~~

~~**087**~~ ~~6.~~ -- **089. (RESERVED)**

**090. CONSENT AGREEMENT -- DEFINED -- FORM AND CONTENTS (RULE 90).**

**01. Consent Agreement Defined.** An A ~~agreement~~s between the taxing authority and another person(s) in which one (1) or more person(s) agree to engage in certain conduct mandated by statute, rule, order, case decision, or other provision of law, or to refrain from engaging in certain conduct prohibited by statute, rule, order, case decision, or other provision of law, ~~are is~~ called a "consent agreements." A C ~~consent agreement~~s ~~are is~~ intended to require compliance with existing law. (2-18-05)( )

**02. Requirements.** A consent agreement must: (2-18-05)

**a.** Recite the parties to the agreement; and (2-18-05)( )

**b.** Fully state the conduct proscribed or prescribed by the consent agreement. (2-18-05)

**03. Additional.** In addition, a consent agreement may: (2-18-05)



- a. Recite the consequences of failure to abide by the agreement; (2-18-05)
- b. Provide for payment of civil or administrative penalties authorized by law; (2-18-05)
- c. Provide for loss of rights, licenses, awards or authority; (2-18-05)
- d. Provide for other consequences as agreed to by the parties; and (2-18-05)
- e. Provide that the parties waive all further procedural rights, ~~(including hearing, and~~ consultation with counsel, ~~etc.)~~ with regard to enforcement of the consent agreement. ~~(2-18-05)~~( )

**091. -- 099. (RESERVED)**

**100. FAIR HEARING (RULE 100).**

**01. Hearing Opportunity.** In any case appealed to the Board, all parties shall be afforded an opportunity for a fair hearing after notice of hearing is provided. Opportunity shall be afforded all parties to present evidence and argument. (4-5-00)

**02. Purpose of Hearing.** The Board's goal in conducting hearings shall be the acquisition of sufficient, accurate evidence to support a fair and just determination of the issues involved in the appeal. (2-18-05)

**03. Notice of Hearing -- Mailing.** ~~A N~~notice of ~~place, date, and hour of all~~ hearings shall be mailed at least twenty (20) days before the date set for hearing. ~~(4-5-00)~~( )

**04. Setting of Hearing ~~Date.~~** ~~In all instances w~~Where a hearing is deemed necessary by the Board, the Board will schedule a reasonably convenient time and place where each party may appear and offer evidence and arguments in support of his their position. ~~(4-5-00)~~( )

**05. Telephonic Hearing.** The Board may conduct a telephonic hearings wherein each participant in the hearing has an opportunity to participate in the entire ~~proceeding while it is taking place~~ hearing. ~~(4-5-00)~~( )

**06. Notice of Hearing -- Contents.** The notice of hearing shall include: (2-18-05)

- a. A statement of the ~~time, place, and nature~~ date, and time of the hearing; ~~(7-1-93)~~( )
- b. A statement of the legal authority ~~and jurisdiction~~ under which the hearing is to be held; ~~(7-1-93)~~( )
- c. A reference to the particular sections of ~~the statutes and or rules involved~~ concerning the ~~Board's legal authority to~~ conduct of the hearing; ~~(4-5-00)~~( )
- d. The name of the hearing officer who ~~will~~ is scheduled to conduct the hearing; ~~and~~ ~~(4-5-00)~~( )
- e. A short and simple statement of the matters asserted or the issues involved. ~~If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application a more definite and detailed statement shall be furnished.~~ ~~(4-5-00)~~( )

**07. Conference at Hearing or Recess.** The presiding officer may convene the parties before hearing or recess the hearing to discuss formulation of ~~simplification of the~~ issues, admissions of fact or identification of documents to avoid unnecessary proof, exchanges of documents, exhibits or prepared testimony, limitation of witnesses, establishment of order of procedure, and other matters that may expedite an orderly ~~conduct of the~~ hearing. ~~(2-18-05)~~( )

**101. FAILURE TO APPEAR** ~~— DEFAULT OR DISMISSAL — SETTING ASIDE — APPEARANCES~~  
**(RULE 101).**

**01. Default or Dismissal.** Failure of either party to appear at the time and place appointed by the Board may result in a dismissal of that appeal or of the granting of the appeal. (4-5-00)

**02. Setting Aside.** Within ten (10) days after service of a default or dismissal order, the party against whom the order was entered may file a written objection requesting ~~that~~ the order be vacated and stating the specific grounds relied upon. The objection must be served on all other parties ~~to the appeal and their representatives~~ in accordance with the requirements of this chapter. The Board may, for good cause, set aside an entry of dismissal, default, or final order. ~~(2-18-05)( )~~

**03. Waiver of ~~Parties'~~ Appearance.** Upon written stipulation of both parties that no facts are at issue, an appeal may be submitted to the Board with or without oral argument. However, the Board in its discretion may require appearance for argument or presentation of evidence. ~~(2-18-05)( )~~

**102. WITHDRAWAL ~~OF PARTIES~~ (RULE 102).**

Any ~~party~~ ~~appellant~~ may withdraw ~~from~~ the ~~notice of~~ appeal in writing, ~~by fax filing~~, or on the record at hearing. ~~(2-18-05)( )~~

**103. (RESERVED)**

**104. ALTERNATIVE DISPUTE RESOLUTION (RULE 104).**

**01. Alternative Resolution ~~of Contested Cases~~.** The Idaho Legislature encourages informal means of alternative dispute resolution (ADR). ~~For contested cases~~ ~~Before the Board~~, the means of ADR include, but are not limited to, settlement negotiations, mediation, fact-finding, minitrials, and arbitration, or any combination of ~~them~~ ~~these~~. These alternatives can frequently lead to ~~a~~ more creative, efficient and sensible outcomes than may be attained under formal contested case procedures. The Board may use ADR for the resolution of issues in controversy ~~in a contested case~~ if the Board finds that such a proceeding is appropriate. ~~The Board may find that using ADR is not appropriate if it determines that an authoritative resolution of the matter is needed for precedential value, that formal resolution of the matter is of special importance to avoid variation in individual decisions, that the matter significantly affects persons who are not parties to the proceeding, or that a formal proceeding is in the public interest.~~ ~~(2-18-05)( )~~

**02. Neutral~~s~~.** When ADR is used for all or a portion of a contested case, the Board may provide a neutral to assist the parties in resolving their disputed issues. The neutral may be an employee of the Board or any other individual who is acceptable to the parties to the proceeding. A neutral shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is disclosed in writing to all parties and all parties agree that the neutral may serve. ~~(2-18-05)( )~~

**03. Confidentiality.** Communications in an ADR proceeding shall not be disclosed by the neutral or by any party to the proceeding unless all parties to the proceeding consent in writing, the communication has already been made public, or the communication is required by court order, statute or rule to be made public. (2-18-05)

**105. INFORMAL DISPOSITION -- SETTLEMENT (RULE 105).**

Any action may be dismissed by the Board by stipulation, agreed written settlement, consent order, or default. For good cause shown and upon written motion made within ten (10) days of entry of a Board order, the Board may set aside such entry, judgment, or order. (2-18-05)

**01. Formalizing Agreements.** An ~~agreement~~ by the parties may be put on the record or may be reduced to writing and filed with the Board. ~~(2-18-05)( )~~

**02. Confidentiality.** Settlement negotiations in a contested case are confidential, unless all participants to the negotiation agree to the contrary in writing. Facts disclosed, offers made and all other aspects of negotiation (except agreements reached) in settlement negotiations ~~in a contested case~~ are not part of the record. ~~(2-18-05)( )~~

**03. Settlement Inquiry.** Through notice or through an order made on the record ~~at prehearing conference or hearing~~, the presiding officer Board may inquire of the parties in any proceeding whether settlement negotiations are in progress or are contemplated, or may invite settlement of an entire proceeding or a certain issues. (2-18-05)(    )

**04. Consideration of Settlements.** A Settlements must be reviewed under this rule. When a settlement is presented ~~to the presiding officer~~, the presiding officer Board will prescribe procedures appropriate to the nature of the settlement to consider the settlement. ~~For example, the presiding officer may summarily accept settlement of essentially private disputes that have no significant implications for administration of the law for persons other than the affected parties. On the other hand, when one or more parties to a proceeding is not party to the settlement or when the settlement presents issues of significant implication for other persons, the presiding officer~~ The Board may convene an evidentiary hearing to consider the reasonableness of the settlement and whether acceptance of the settlement is consistent with the Board's charge under the law. (2-18-05)(    )

**05. Burden of Proof.** Proponents of a proposed settlement carry the burden of showing that the settlement is in accordance with the law. ~~The presiding officer may require the development of an appropriate record in support of or opposition to a proposed settlement as a condition of accepting or rejecting the settlement.~~ (2-18-05)(    )

**06. Settlement Not Binding.** The ~~presiding officer~~ Board is not bound by settlement agreements that are not unanimously accepted by all parties or that have significant implications for persons not parties. ~~In these instances, the presiding officer will independently review any proposed settlement to determine whether the settlement is in accordance with the law.~~ (2-18-05)(    )

**106. PRESIDING OFFICER (RULE 106).**

Any member~~(s)~~ of the Board or assigned hearing officer~~(s)~~ may preside at the hearing and shall have power to: (2-18-05)(    )

**01. Oath or Affirmation.** Administer oaths or affirmations, call a party or other person present at hearing as a witness, examine witnesses and receive evidence; (4-5-00)

**02. Depositions.** Take or cause depositions to be taken; (7-1-93)

**03. Hearing.** Regulate the course of the hearing and maintain an orderly proceeding; (4-5-00)

**04. Motions.** Dispose of the procedural requests, motions or similar matters; (7-1-93)

**05. Certification by Board.** Make decisions or proposals for decisions ~~(subject to certification by the entire Board or~~ a majority of the Board); (4-5-00)(    )

**06. Official Record.** Develop a full and accurate record and certify the record of said appeal on behalf of the Board; and (2-18-05)(    )

**07. Other Action.** Take any other appropriate action reasonable under the circumstances. (4-5-00)

**107. PROCEDURE AND TESTIMONY (RULE 107).**

**01. Preliminary Procedure.** The presiding officer shall call the proceeding for hearing and proceed to take the appearances and act upon any pending motion ~~or motions~~. Parties may then make opening statements ~~as they may desire~~. (7-1-93)(    )

**02. Testimony.** All testimony ~~to be considered by the Board in formal hearings~~, except matters noticed officially or entered by stipulation at hearings or prehearing conference, shall be taken only on oath or affirmation. (4-5-00)(    )

**03. Order of Procedure.** The appellant shall go forward to present his case first with the respondent

and any intervenor then presenting ~~such matters as he deems proper~~. Parties may then make closing statements ~~as they may desire~~ in the same order as the presentation of evidence. The presiding officer may require ~~that~~ the ~~parties submit~~ submission of briefs in addition to, or in lieu of, closing arguments. A maximum of two (2) weeks shall be allowed to submit these briefs. The presiding officer may prescribe a different procedure than herein provided.

(2-18-05)( )

- 04. Presentation of Evidence.** Evidence may be presented in the following order: (4-5-00)
- a. Evidence is presented by appellant. (4-5-00)
  - b. Evidence is presented by any intervening or opposing party. (4-5-00)
  - c. Rebuttal evidence is presented by appellant. (4-5-00)
  - d. Surrebuttal evidence is presented by any intervening or opposing party. (4-5-00)

**05. Examination of Witnesses.** With regard to any witness who testifies, the following examination may be conducted: (4-5-00)( )

- a. Direct examination ~~conducted~~ by the party who called the witness. (4-5-00)( )
- b. Cross-examination by any intervening or opposing party. (4-5-00)
- c. Redirect examination by the party who called the witness. (4-5-00)
- d. Recross-examination by any intervening or opposing party. (4-5-00)
- e. Examination by the ~~hearing officer~~ Board. (4-5-00)( )

**108. -- 109. (RESERVED)**

**110. STIPULATIONS (RULE 110).**

With the approval of the presiding officer the parties may stipulate as to any fact at issue, ~~either by written stipulation or introduced in evidence as~~ The stipulation may be filed, or offered through an exhibit or by oral statement shown upon the hearing record. Any such stipulation shall be binding upon all parties so stipulating and may be regarded by the Board as evidence. The Board, however, may require evidence of the facts stipulated, notwithstanding the stipulation ~~of the parties~~. (2-18-05)( )

**111. CONTINUANCE — ~~EXTENSIONS OF TIME~~ (RULE 111).**

**01. Continuances.** A continuance may be ordered by the Board upon filing of a timely and written motion containing the stipulated agreement and signature of all parties to the appeal. For a scheduled hearing, timely shall mean at least fifteen (15) days prior to hearing. The ~~request~~ motion shall clearly and convincingly show good cause and contain the specific time extension requested. (2-18-05)( )

**02. Consideration.** Continuances shall be generally disfavored by the Board. The Board shall grant, or require on its own initiative, a continuance only when unusual and highly pressing circumstances are present. In no instance shall an extension cause a delay in proceedings for more than three (3) months. In no instance shall a second continuance be granted. (4-5-00)

**112. -- 114. (RESERVED)**

**115. OFFICIAL NOTICE (RULE 115).**

The Board may take official notice of judicially cognizable facts. In addition, the Board may take notice of general, technical, financial, or scientific facts within the Board's specialized knowledge. Parties shall be notified either before or during the hearing, ~~or by reference in preliminary reports or otherwise~~, of the material noticed. Parties shall be given a reasonable opportunity to object, review, examine, and rebut or contest the information sought to be noticed.

(2-18-05)( )

(BREAK IN CONTINUITY OF SECTIONS)

117. RULES OF EVIDENCE — ~~EVALUATION OF EVIDENCE~~ (RULE 117).

**01. Evidence, Admissibility and Evaluation.** Evidence should be taken by the Board to assist the parties' development of the record, not excluded to frustrate that development. The presiding officer is not bound by the Idaho Rules of Evidence. No informality in any proceeding or in the manner of taking testimony invalidates any evidence. The presiding officer, with or without objection, may exclude evidence that is irrelevant, immaterial, unduly repetitious, or inadmissible on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of Idaho. The Board shall give effect to rules of privilege recognized by law. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of serious affairs. When proceedings will be expedited and the interests of the parties will not be substantially prejudiced, any part of the evidence may be received in written form. The Board's experience, technical competence and specialized knowledge may be used in evaluation of the evidence. (2-18-05)

**02. Documentary Evidence.** Upon request, parties shall be given an opportunity to compare the copy with the whole of the original document. Filing of a document does not signify its receipt in evidence, and only those documents which have been received in evidence shall be considered as evidence in the official record of the case. (2-18-05)

**03. Depositions.** A deposition may be offered into evidence. (2-18-05)

**04. Prepared Testimony.** The presiding officer may order a witness's prepared testimony previously distributed to all parties be included in the record of hearing as if read. Admissibility of prepared testimony is subject to the standards expressed in this rule. (2-18-05)

**05. Objections and Exceptions.** Where objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly at the time ~~the evidence is offered~~ of objection and before the start of closing statements. Formal exceptions to rulings are unnecessary and need not be taken. (4-5-00)( )

**06. Evidentiary Rulings.** The presiding officer shall rule on the admissibility of all evidence and may grant exceptions to the requirements of this rule in the interest of justice. Such rulings may be reviewed by the Board in determining the matter on its merits. Any evidence ruling may be deferred to the entire Board by the presiding officer or taken under advisement. The presiding officer may receive evidence subject to a motion to strike at the conclusion of the hearing. (2-18-05)

**07. Offer of Proof.** An Offer of Proof for the record shall consist of a statement of the substance of the evidence to which objection has been sustained. In any event where the presiding officer rules evidence inadmissible, the party seeking to introduce such evidence must make an Offer of Proof ~~regarding it in order~~ to have such evidence considered by the Board. (4-5-00)( )

**08. Failure to Produce Evidence -- Adverse Inference.** The Board may draw an adverse inference when a party or witness fails to produce requested evidence which is reasonably in the party or witness's control. (2-18-05)

**09. Post-Hearing Evidence.** Unless allowed by the presiding officer, no post-hearing evidence will be accepted. ( )

118. EXHIBITS (RULE 118).

**01. Custody.** The Board shall keep all original exhibits ~~in its care and custody~~ unless otherwise provided by law. (2-18-05)( )

02. **Marking ~~Exhibits~~.** Exhibits will be marked ~~by the presiding officer indicating~~ to indicate the sponsoring and offering party. (2-18-05)(    )

03. **Form.** An Exhibits prepared for hearing should ~~ordinarily~~ be typed or printed on eight and one-half inch (8 1/2") by eleven inch (11") white paper, except a maps, charts, photographs and or non-documentary exhibits may be introduced on the size or kind of medium customarily used for them. (2-18-05)(    )

04. **Copies.** A copy of each documentary exhibit must be furnished to each party present and to the presiding officer, except for unusually bulky or voluminous exhibits that have previously been made available for the parties' inspection. Copies must be of good quality. (2-18-05)

05. **Objections.** An Exhibits identified at hearing ~~are is~~ subject to appropriate and timely objection before the ~~close of the hearing~~ start of closing statements. A presented Exhibits to which no objection is made ~~are is~~ automatically admitted into evidence without motion ~~of the sponsoring party~~. (2-18-05)(    )

119. -- 124. (RESERVED)

125. **CONFIDENTIALITY -- PROTECTIVE ORDERS (RULE 125).**

The decisions and official records in appeals before the Board are public records and will be disclosed unless otherwise provided by Title 9, Chapter 3, Idaho Code, or ~~in the event~~ when a protective order, consistent with Title 9, Chapter 3, Idaho Code, is issued ~~by the Board requiring that specified parts of the record be kept confidential~~. A party may file a motion for a protective order showing good cause why specific information ~~in the record, or likely to become part of the record through discovery or evidence obtained at hearing~~ should remain confidential. The motion ~~under this rule~~ must ~~also contain~~ include a ~~statement or~~ sworn affidavit as to the truthfulness of the contents. ~~The party requesting a protective order must serve a copy of the request on all other parties and the parties' representatives in accordance with the requirements of this chapter~~. If ~~any~~ an other party opposes the request ~~for a protective order, the~~ that party must file a written opposition objection within ten (10) days ~~of the date of service of the request~~. The motion for protective order must be filed within twenty (20) days of the mailing date of the Board's notice of appeal acknowledgement letter. (2-18-05)(    )

126. -- 134. (RESERVED)

135. **SCOPE OF APPEAL IN AD VALOREM APPEALS CASE (RULE 135).**

In ~~an~~ appeals brought under Section 63-511, Idaho Code, ~~in which~~ where the appellant appeals challenges only the value or exempt status ~~established by the board of equalization~~ upon either the land or the improvements on the land, the Board shall have jurisdiction to determine the value or exempt status ~~when one (1) or the other is appealed over the entire property~~. The Board shall have the power to increase or decrease the value of property in a market value appeals ~~regardless of which party appealed~~. If the Board finds that a property classification is in error, it shall determine the correct classification. (2-18-05)(    )

136. -- 139. (RESERVED)

140. **DECISIONS AND ORDERS (RULE 140).**

01. **Submission for a Decision.** The proceeding shall stand submitted for decision by the Board after ~~taking of evidence, the filing of briefs or the presentation of oral arguments~~ the record is closed by the presiding officer or as ~~may have been~~ otherwise prescribed by the Board ~~or the presiding officer unless otherwise specifically provided~~. (4-5-00)(    )

~~02. **Post Hearing Evidence.** Unless requested by the Board, no posthearing evidence will be accepted.~~ (2-18-05)

~~03. **Proposed Orders.** Prior to a final decision on the merits the Board may, in its discretion, request proposed findings of fact and conclusions of law from each party.~~ (2-18-05)(    )

~~04. **Decisions Dicta.** Board decisions are binding pursuant to Section 63-3813, Idaho Code. A~~

~~recommended decision or substantive order shall become final when signed by at least two (2) board members. Any A~~  
member who dissents or concurs may state their reasons. (2-18-05)( )

**054. Service of Orders Notice.** Parties' representatives shall be notified by mail of any final decision or order. ~~Copies of the decision or order shall be served on all parties and the parties' representatives of record.~~  
(4-5-00)( )

**065. Public Inspection.** Decisions and orders of the Board shall be open to public inspection. (7-1-93)

**076. Decision of Board on the Record.** A decision of the Board will be based on the official record for the case. ~~When no dispute of fact exists, the decision will be based on conclusions of law made by the Board. The Board shall hear and determine appeals as de novo proceedings. Decisions shall contain separately stated findings of fact and conclusions of law upon which the Board's determination is based.~~  
(2-18-05)( )

141. -- 144. (RESERVED)

**145. RECONSIDERATIONS -- REHEARINGS (RULE 145).**

**01. Time for Filing and Service.** A party adversely affected by a final decision ~~of the Board~~ may move for reconsideration or rehearing within ten (10) days of the time the decision ~~of the Board~~ is mailed. The petitioner must file a supporting brief making a strong showing of good cause why a reconsideration or a rehearing motion should be granted. ~~In a motion for rehearing w~~Where the presentation of additional evidence is sought ~~or anticipated~~, the motion shall include the reason why such evidence was not presented previously. ~~Filing and service thereof shall conform to the requirements set forth in Rules 60 and 61. If the party requesting rehearing so requests, the matter may be determined by the entire Board. If a rehearing by the entire Board is requested and granted it will be conducted at a regular meeting in Boise or a meeting convened for that purpose at Boise or such other place as may be designated by the chairman of the Board.~~  
(2-18-05)( )

**02. Consideration.** Reconsideration or rehearing may be granted or ordered on the Board's own motion if, in reaching the decision, the Board has overlooked or misconceived some material fact or proposition statement of law; misconceived a material question in the case; applied law in the ruling that has subsequently changed; or a party is found to have been denied the opportunity for a fair hearing. (2-18-05)( )

**03. Procedure for Reconsideration.** Reconsideration is based on the record, unless the Board allows additional evidence and argument. (4-5-00)

**04. Procedure ~~at~~ for Rehearing.** Rehearings will be conducted in accordance with the procedure at regular hearings, subject to the discretion of the Board ~~or the presiding officer.~~ (4-5-00)( )

**05. Answer ~~to Motion for Reconsideration or Rehearing.~~** Within ten (10) days after a motion for reconsideration ~~of or~~ rehearing is filed, any other party ~~to the proceeding~~ may file an answer a response in support of or in opposition to said motion. ~~A copy of the answer must be served on other parties and the representatives of record for such parties.~~  
(4-5-00)( )

**06. Disposition.** A petition motion for reconsideration or rehearing shall be deemed denied if, within ~~twenty~~ thirty (230) days from the date the petition is received by the Board, no response is made by the Board. (4-5-00)( )

146. -- 150. (RESERVED)

**151. OFFICIAL RECORD (RULE 151).**

**01. Content.** The record ~~for a contested case~~ shall include: (2-18-05)( )

a. All notices of proceedings; (2-18-05)

b. All applications or claims or appeals, petitions, complaints, protests, motions, and answers filed in

- the proceeding; (2-18-05)
- c. All intermediate or interlocutory rulings; (2-18-05)
  - d. All evidence received ~~or considered (including all transcripts or recordings of hearings and all exhibits offered or identified at hearing);~~ (2-18-05)(    )
  - e. All offers of proof, however made; (2-18-05)
  - f. All briefs, memoranda, proposed orders of the parties or of the presiding officers, statements of position, ~~statements of~~ or support, and ~~exceptions filed by parties or persons not parties~~ objections, but not discovery responses; (2-18-05)(    )
  - g. All evidentiary rulings on testimony, exhibits, or offers of proof; (2-18-05)
  - h. All taxing authority data submitted in connection with the consideration of the proceeding; (2-18-05)
  - i. A statement of matters officially noticed; (2-18-05)
  - j. All recommended orders, preliminary orders, final orders, and orders on reconsideration or rehearing; (2-18-05)(    )
  - k. Photocopies of all original documents ~~may be substituted for the originals~~ unless specifically objected to by a party to the proceedings; and (2-18-05)(    )
  - l. The recording or transcript ~~defined~~ specified in Rule 151.02. (2-18-05)(    )
02. **Transcript Verbatim Record.** The official ~~transcript recording~~ of the hearing will be taken by means of ~~electronic tape recorder~~ a digital recorder or other device. ~~Any party desiring the taking of stenographic notes by a qualified court reporter must request at least fifteen (15) days before the date set for hearing and must submit to the Board or presiding officer the name of the qualified reporter who is available on the date set for hearing. The~~ A party requesting ~~the a court~~ reporter shall bear the expense of the reporter's fees, ~~and if~~ the reporter's transcript is deemed by the Board ~~or presiding officer~~ to be the official transcript ~~of the hearing~~, the party requesting the reporter shall furnish the Board a transcript free of charge. (2-18-05)(    )
03. **Cost of Transcript.** ~~Uncertified copies of the transcript tape(s)~~ A certified copy of a recording will be provided at the cost of ten dollars (\$10) ~~per tape.~~ A party may receive one (1) copy at no charge. (2-18-05)(    )

152. -- 154. (RESERVED)

155. SUBPOENAS (RULE 155).

01. **Form and Purpose.** ~~Every subpoena shall be prepared by the requesting party or at the Board's own motion and shall state the name of the Board and the title of the action, and shall command each person to whom it is directed to attend and give testimony and/or produce the books, papers, documents, or tangible things designated therein at the time and place therein specified. A subpoena may be used for the purpose of discovery or for the purpose of presenting evidence at a formal hearing.~~ **Issuance of Subpoena.** Upon a motion in writing, or upon the Board's own initiative without motion, the Board may issue a subpoena requiring: (4-5-00)(    )
- a. The attendance of a witness from any place in Idaho; (    )
  - b. The production of documents from any place in Idaho; or (    )
  - c. The production of any book, paper, document, or tangible thing kept within or without Idaho to any designated place of deposition or hearing for the purpose of taking testimony or examining a document before the Board. (    )



~~02. **Issuance to Parties Motion Contents and Timing.** Upon written application of parties, attorneys or other representative authorized to practice before the Board for any party in a proceeding, including **The motion shall be in writing and include** a showing of relevance and the reasonable scope of the testimony or **evidence specific items** sought, ~~there shall be issued to such party subpoenas requiring the attendance and testimony of witnesses or the production of evidence in such proceeding. The Board may issue subpoenas to parties not so represented upon request or upon a showing of general relevance and reasonable scope of the testimony or evidence sought. The motion for subpoena shall be filed at least fifteen (15) days before the date and time set forth in the subpoena, exceptions may be granted upon a showing of good cause.~~ (4-5-00)(    )~~

~~03. **Service.** Service, and the filing of the proof of such service with the Board, shall be the responsibility of the requesting party. ~~Unless the service of a subpoena is acknowledged on its face by the person subpoenaed, service shall be made by delivering a copy of the subpoena to such person and by tendering him on demand the fees for one (1) day's attendance and the mileage allowed by law to a witness in civil cases in the district court.~~ (4-5-00)(    )~~

~~04. **Fees.** A ~~Witnesses~~ summoned pursuant to subpoena shall be paid by the party at whose instance they appear the same fees and mileage allowed by law to a witness in civil cases in the district court. (7-1-93)(    )~~

~~05. **Proof of Service.** The person serving the subpoena shall make proof of service by filing the subpoena and the required return, affidavit or acknowledgment of service with the Board. (7-1-93)~~

~~06. **Motion to Quashing.** The Board, Upon motion to quash made promptly, ~~at or~~ **and in any event, made** before the time ~~specified in~~ **to comply with** the subpoena, ~~for compliance, by the person to whom the subpoena is directed and upon notice to the party to whom the subpoena was issued, the Board may:~~ (7-1-93)(    )~~

~~a. Quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue; or (7-1-93)~~

~~b. Condition denial of the motion upon just and reasonable conditions. (7-1-93)(    )~~

~~07. **Enforcement.** If any witness shall fail to properly respond to a subpoena, the Board may petition the district court in and for the county in which the proceeding is pending setting forth the issuance of the subpoena, its proper service and the basis upon which the Board alleges that the witness failed to respond. (7-1-93)~~

~~08. **Geographical Scope.** Such attendance of witnesses and such production of evidence may be required from any place in the state of Idaho at any designated place of hearing. (7-1-93)~~

156. -- 164. (RESERVED)

**165. REQUEST FOR WRITTEN TRANSCRIPT (RULE 165).**

~~Upon request of a written transcript, the Board may provide a list of court reporting and transcribing services to the requesting party. **The party requesting a transcript shall make the A**rrangements for preparation of transcript and payment of the fee ~~will be made between the party requesting the transcript and~~ **directly with** the transcriber. The original ~~tape recorded~~ hearing **transcript recording** will remain with the Board until requested by the transcriber, or included ~~in~~ **with** the official record transmitted to the district court. (2-18-05)(    )~~

## IDAPA 37 - DEPARTMENT OF WATER RESOURCES

### 37.03.03 - RULES AND MINIMUM STANDARDS FOR THE CONSTRUCTION AND USE OF INJECTION WELLS

DOCKET NO. 37-0303-1201

#### 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 42-3913, Idaho Code.

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

<p><b>Wednesday, October 24, 2012 9:00 a.m. to 4:00 p.m.</b></p>
--

<p><b>Conference Rooms 602C and 602D Idaho Water Center, 322 East Front Street, Boise, Idaho 83720</b></p>
--

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:

Existing portions of IDAPA 37.03.03, "Rules and Minimum Standards for the Construction and Use of Injection Wells", specific to Class V injection wells have been revised to be made consistent with Idaho Code Title 42, Chapter 39 "Injection Wells" and the Code of Federal Regulations Parts 144 through 148. Definitions have been added or updated, existing exemptions for certain shallow injection wells have been removed, and permitting and advertising requirements for low-flow domestic heat pump return injection wells have been reduced. New rules specific to Class II injection wells used in association with oil and gas production have been added.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 April 4, 2012 Idaho Administrative Bulletin, [Volume 12-4, page 15](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Brian Ragan, P.G. at (208) 287-4934, [brian.ragan@idwr.idaho.gov](mailto:brian.ragan@idwr.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 28th day of August, 2012.

Brian Ragan, P.G.  
Underground Injection Control Program  
Idaho Department of Water Resources  
322 East Front Street

P.O. Box 83720  
Boise, Idaho 83720  
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Fax: (208) 287-6700

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 37-0303-1201**

**001. TITLE AND SCOPE (RULE 1).**

**01. Title.** These rules will be cited as IDAPA 37.03.03 “Rules and Minimum Standards for the Construction and Use of Injection Wells.” (5-3-03)

**02. Scope.** These rules and minimum standards are for construction and use of injection wells in the state of Idaho. Upon promulgation, these rules apply to all injection wells (see Rule Subsection 0235.01). The construction and use of Class I, ~~II, III, or IV~~, or VI injection wells are prohibited by these rules. Class IV wells are also prohibited by federal law. These rules and minimum standards for construction and use of injection wells shall apply to all injection wells in the state of Idaho, including except in Indian lands to the extent not otherwise preempted by federal law administered by the United States Environmental Protection Agency (EPA). All injection wells shall be permitted and constructed in accordance with the “Well Construction Standards Rules” found in IDAPA 37.03.09 which are authorized under Section 42-238, Idaho Code. (5-3-03)( )

**03. Rule Coverage.** In the event that a portion of these rules is less stringent than the minimum requirements for injection wells as established by Federal regulations, the correlative Federal requirement will be used to regulate the injection well. ( )

**04. Variance of Methods.** The Director may approve the use of a different testing method or technology if it is no less protective of human health and the environment, will not allow the migration of injected fluids into a USDW, meets the intent of the rule and yields information or data consistent with the original method or technology required. A request for review by the Director must be submitted in writing by the applicant, permit holder, or operator and be included with all pertinent information necessary for the Director to evaluate the proposed testing method or technology. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS (RULE 10).**

**01. Abandonment.** ~~The discontinuance of the use of an injection well. See “permanent abandonment,” “temporary abandonment,” and “unauthorized abandonment.”~~ See “permanent decommission.” (7-1-93)( )

**02. Abandoned Well.** See “permanent decommission”. ( )

**03. Agricultural Runoff Waste.** Excess surface water from agricultural fields generated during any agricultural operation, including runoff of irrigation tail water, as well as natural drainage resulting from precipitation, snowmelt, and floodwaters, and is identical to the statutory phrase “irrigation waste water” found in Idaho Code 42-3902. ( )

**024. Applicant.** Any owner or operator submitting an application for permit to construct, modify or maintain an injection well to the Director of the Department of Water Resources. (7-1-93)

05. Application. The standard Department forms for applying for a permit, including any additions, revisions or modifications to the forms. ( )

~~036.~~ **Aquifer.** Any formation that will yield water to a well in sufficient quantities to make production of water from the formation reasonable for a beneficial use, except when the water in such formation results solely from fluids deposited through an injection well. (5-3-03)

07. Area of Review. The area surrounding an injection well described according to the criteria set forth in Subsection 045.07 of these rules. ( )

**048. Beneficial Use.** One (1) or more of the recognized beneficial uses of water including but not limited to, domestic, municipal, irrigation, hydropower generation, industrial, commercial, recreation, aquifer recharge and storage, stockwatering and fish propagation uses, as well as other uses which provide a benefit to the user of the water as determined by the Director. Industrial use as used for purposes of these rules includes, but is not limited to, manufacturing, mining and processing uses of water. (5-3-03)

**059. Best Management Practice (BMP).** A practice or combination of practices ~~determined to be the most that are more~~ effective ~~and practicable means of~~ than other techniques at preventing or reducing contamination of ground water and surface water by injection well operation, ~~to achieve water quality goals and protect beneficial uses of ground water.~~ (7-1-93)( )

~~0610. Casing. A conduit required by these rules and Well Construction Standards Rules to maintain the well opening and prevent contamination of ground water. A pipe or tubing of appropriate material, of varying diameter and weight, lowered into a borehole during or after drilling in order to support the sides of the hole and thus prevent the walls from caving, to prevent loss of drilling mudfluid into porous ground, or to prevent water, gas, or other fluid from entering or leaving the hole.~~ (7-1-93)( )

11. Cementing. The operation whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing. ( )

~~0712.~~ **Cesspool.** An injection well that receives sanitary waste without benefit of a treatment system or treatment device such as a septic tank. Cesspools have open bottom and/or perforated sides. (5-3-03)

**0813. Coliform Bacteria.** All of the aerobic and facultative anaerobic, gram-negative, non-spore forming, rod-shaped bacteria that either ferment lactose broth with gas formation within forty-eight (48) hours at thirty-five degrees Celsius (35C), or produce a dark colony with a metallic sheen within twenty-four (24) hours on an Endo-type medium containing lactose. (7-1-93)

14. Confining Bed. A body of impermeable or distinctly less permeable material stratigraphically adjacent to one (1) or more aquifers. ( )

15. Confining Zone. A geological formation, group of formations, or part of a formation that is capable of limiting fluid movement above an injection zone. ( )

~~0916.~~ **Construct.** To create a new injection well or to convert any structure into an injection well. (7-1-93)

~~107.~~ **Contaminant.** Any physical, chemical, ion, radionuclide, synthetic organic compound, micro-organism, waste or other substance biological, or radiological substance or matter which does not occur naturally in ground water or which naturally occurs at a lower concentration. (7-1-93)( )

~~118.~~ **Contamination.** The ~~direct or indirect introduction of any contaminant into ground water, caused in whole or in part by human activity;~~ introduction into the natural ground water of any physical, chemical, biological, or radioactive material that may; (7-1-93)( )

a. Cause a violation of Idaho Ground Water Quality Standards found in IDAPA 58.01.11 "Ground Water Quality Rule"; or ( )

- b.** Adversely affect the health of the public; or ( )
- c.** Adversely affect a designated or beneficial use of the State's ground water. Contamination includes the introduction of heated or cooled water into the subsurface that will alter the ground water temperature and render the local ground water less suitable for beneficial use. ( )
- 19.** Conventional Mine. An open pit or underground excavation for the production of minerals. ( )
- 20.** Decommission. To remove a well from operation such that injection through the well is not possible. See "permanent decommission" and "unauthorized decommission". ( )
- ~~21.~~ **DEQ.** The Idaho Department of Environmental Quality. (5-3-03)
- ~~22.~~ **Deep Injection Well.** An injection well which is more than eighteen (18) feet in vertical depth below land surface, and is identical to the statutory phrase, "waste disposal and injection well." (7-1-93)
- ~~23.~~ **Department.** The Idaho Department of Water Resources. (7-1-93)
- ~~24.~~ **Director.** The Director of the Idaho Department of Water Resources. (7-1-93)
- 25.** Disposal Well. A well used for the disposal of waste into a subsurface stratum. ( )
- ~~26.~~ **Draft Permit.** The completed Application for Permit with permit conditions, compliance schedules and monitoring requirements attached. A prepared document indicating the Director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a "permit." Permit conditions, compliance schedules, and monitoring requirements are typically included in a "draft permit". A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of "draft permits." A denial of a request for modification, revocation and reissuance, or termination is not a "draft permit." (7-1-93)( )
- 27.** Drilling Fluid. Any number of liquid or gaseous fluids and mixtures of fluids and solids (such as solid suspensions, mixtures and emulsions of liquids, gases, and solids) used in operations to drill boreholes into the earth. ( )
- ~~27.~~ Drinking Water Source. An aquifer which contains water having less than ten thousand (10,000) mg/l total dissolved solids and has not been exempted from this designation by the Director of the Department of Water Resources pursuant to Rule 75. (7-1-93)
- ~~28.~~ **Drywell.** An injection well completed above the water table so that its bottom and sides are typically dry except when receiving fluids. (5-3-03)
- 29.** Emergency Permit. A UIC "permit" issued in accordance with Subsection 045.09 of these rules. ( )
- ~~30.~~ **EPA.** The United States Environmental Protection Agency. (5-3-03)
- ~~31.~~ **Endangerment.** Injection of any fluid which exceeds Idaho ground water quality standards that may result in the presence of any contaminant in ground water which supplies or can reasonably be expected to supply any public or non-public water system, and if the presence of such contaminant may result in such a system not complying with any ground water quality standard or may otherwise adversely affect the health of persons or result in a violation of ground water quality standards that would adversely affect beneficial uses. (5-3-03)( )
- 32.** Exempted Aquifer. An "aquifer" or its portion that meets the criteria in the definition of "underground source of drinking water" but which has been exempted according to the procedures in IDAPA 58.01.11 "Ground Water Quality Rule". ( )
- 33.** Existing Injection Well. An "injection well" other than a "new injection well." ( )

34. Experimental Technology. A technology which has not been proven feasible under the conditions in which it is being tested. ( )

35. Facility or Activity. Any UIC “injection well,” or another facility or activity that is subject to regulation under the UIC program. ( )

36. Fault. A surface or zone of rock fracture along which there has been displacement. ( )

37. Flow Rate. The volume per time unit given to the flow of gases or other fluid substance which emerges from an orifice, pump, turbine or passes along a conduit or channel. ( )

~~238.~~ Fluid. Any material or substance which flows or moves, whether in a semisolid, liquid, sludge, gaseous or any other form or state. (7-1-93)( )

~~239.~~ Formation. A body of consolidated or unconsolidated rock characterized by a degree of lithologic homogeneity which is prevailingly, but not necessarily, tabular and is mappable ~~at the~~ on the earth’s surface or traceable in the subsurface. (7-1-93)( )

40. Formation Fluid. Fluid present in a “formation” under natural conditions as opposed to introduced fluids. ( )

41. Generator. Any person, by site location, whose act or process produces hazardous waste identified or listed in 40 CFR part 261. ( )

~~242.~~ Ground Water. Any water that occurs beneath the surface of the earth in a saturated formation of rock or soil. (5-3-03)

243. Ground Water Quality Standards. Standards found in IDAPA 58.01.11, “Ground Water Quality Rule,” Section 200. (5-3-03)

~~254.~~ Hazardous Waste. Any substance defined by IDAPA 58.01.05, “Rules and Standards for Hazardous Waste,” (40 CFR 261.3). (5-3-03)

45. Indian Lands. “Indian Country” as defined in 18 U.S.C. 1151. That section defines Indian Country as: ( )

a. All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; ( )

b. All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and ( )

c. All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. ( )

46. Individual Subsurface Sewage Disposal System. For the purpose of these rules, any standard or alternative disposal system which discharges sanitary waste beneath the earth’s surface. These systems inject less than two thousand five hundred (2,500) gallons per day and have the capacity to serve fewer than twenty (20) persons per day. ( )

47. Improved Sinkhole. A naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings which have been modified by man for the purpose of directing and emplacing fluids into the subsurface. ( )

~~248.~~ Injection. The subsurface emplacement of fluids- through an injection well, but excludes the

~~following: The purpose of injection by Class V wells is the temporary or permanent disposal or storage of fluids into subsurface formations.~~ (5-3-03)( )

a. The underground injection of natural gas for purposes of storage; ( )

b. The underground injection of fluids or propping agents, other than diesel fuels, pursuant to hydraulic fracturing operations related to oil, gas, or geothermal activities. ( )

~~2849.~~ **Injection Well.** Any ~~excavation or artificial opening into the ground which meets the following three (3)~~ feature that is operated to allow injection which also meets at least one (1) of the following criteria: (7-1-93)( )

a. It is a  $\Delta$  bored, drilled or dug hole, or is a driven mine shaft or a driven well point whose depth is greater than the largest surface dimension; and (7-1-93)( )

b. It is deeper than its largest straight-line surface dimension  $\Delta$  dug hole whose depth is greater than the largest surface dimension; and (7-1-93)( )

c. It is used for or intended to be used for injection. An improved sinkhole; or (7-1-93)( )

d. A subsurface fluid distribution system. ( )

e. Provided however, that "injection well" does not mean or include any well drilled for oil, gas, or geothermal production activities, other than one into which diesel fuels are injected pursuant to hydraulic fracturing operations ( )

50. Injection Zone. A geological "formation", or those sections of a formation receiving fluids through an "injection well." ( )

~~29. Irrigation Waste Water.~~ ~~Water diverted for irrigation but not applied to crops, or runoff of irrigation tail water from the cropland as a result of irrigation.~~ (7-1-93)

~~26~~**51. IWRB.** Idaho Water Resource Board. (5-3-03)

~~30~~**52. Large Capacity Cesspools.** Any cesspool used by a multiple dwelling, community or regional system for the disposal of sanitary wastes (for example: a duplex or an apartment building) or any cesspool used by or intended to be used by twenty (20) or more people per day (for example: a rest stop, campground, restaurant or church). (5-3-03)

53. Large Capacity Septic System. Class V wells that dispose of sanitary waste through a septic tank and are used by multiple dwellings, business establishments, communities, and regional business establishments for the injection of wastes. These systems have the capacity to serve twenty (20) or more people per day and receive more than two thousand five hundred (2,500) gallons per day. ( )

54. Lithology. The description of rocks on the basis of their physical and chemical characteristics. ( )

~~31~~**55. Maintain.** To allow, either expressly or by implication, an injection well to exist in such condition as to accept or be able to accept fluids. Unless a well has been ~~abandoned~~ permanently decommissioned pursuant to the criteria contained in these rules it is considered to be capable of accepting fluids. (7-1-93)( )

56. Mechanical Integrity. The condition or status of an injection well and its physical components as they relate to the flow of fluids inside or outside the injection well. A well is said to have mechanical integrity if there is no significant leak in the casing, tubing, or packer, and there is no significant fluid movement into a underground source of drinking water through vertical channels adjacent to the wellbore. ( )

~~32~~**57. Modify.** To alter the construction of an injection well, but does not include cleaning or redrilling

operations which neither deepen nor increase the dimensions of the well. (7-1-93)

~~3358.~~ **Motor Vehicle Waste Disposal Wells.** Injection wells that receive or have received fluids from vehicle repair or maintenance activities, such as an auto body repair shop, automotive repair shop, new and used car dealership, specialty repair shop (transmission and muffler repair shop), or any facility that does any vehicular repair work. (5-3-03)

~~59.~~ **New Injection Well.** An “injection well” which began to be used for injection after a UIC program for the State applicable to the well is approved or prescribed. ( )

~~60.~~ **Open-Loop Heat Pump Return Wells.** Injection wells that receive surface water or ground water that has been passed through a heat exchange system for cooling or heating purposes. ( )

~~3461.~~ **Operate.** To allow fluids to enter an injection well by action or inaction of the operator. (7-1-93)

~~3562.~~ **Operator.** Any individual, group of individuals, partnership, company, corporation, municipality, county, state agency, taxing district, federal agency or other entity that operates or proposes to operate any injection well. (7-1-93)

~~363.~~ **Owner.** Any individual, group of individuals, partnership, company, corporation, municipality, county, state agency, taxing district, federal agency or other entity owning land on which any injection well exists or is proposed to be constructed. (7-1-93)

~~64.~~ **Packer.** A device lowered into a well to produce a fluid-tight seal. ( )

~~3765.~~ **Perched Aquifer.** Ground water separated from an underlying main body of ground water by an unsaturated zone. (7-1-93)

~~3866.~~ **Permanent ~~Abandonment~~ Decommission.** The discontinuance of use of an injection well in accordance with current IDAPA 37.03.09, “Well Construction Standards a method approved by the Director such that the injection well no longer has the capacity to inject fluids and the upward or downward migration of fluid is prevented.” Permanent abandonment requires plugging the well bore with bentonite grout, cement grout, concrete, or other impermeable material to prevent the upward or downward migration of fluids. (5-3-03)( )

~~67.~~ **Permit.** An authorization, license, or equivalent control document issued by the Department. ( )

~~3968.~~ **Person.** Any individual, association, partnership, firm, joint stock company, trust, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any other legal entity which is recognized by law as the subject of right and duties (Idaho Code 30-101 EPHA). (7-1-93)

~~69.~~ **Plugging.** The act or process of stopping the flow of water, oil or, gas, or other fluids into or out of a formation through a borehole or well penetrating that formation. ( )

~~70.~~ **Plugging Record.** A systematic listing of permanent or temporary decommissioning of water, oil, gas, test, exploration and waste injection wells, and may contain a well log, description of amounts and types of plugging material used, the method employed for plugging, a description of formations which are sealed and a graphic log of the well showing formation location, formation thickness, and location of plugging structures. ( )

~~4071.~~ **Point of Beneficial Use.** The top or surface of a ~~drinking water source~~ USDW, directly below an injection well, where water is available for a beneficial use. (5-3-03)( )

~~4172.~~ **Point of Diversion for Beneficial Use.** A location such as a producing well or spring where ground water is taken under control and diverted for a beneficial use. (7-1-93)

~~4273.~~ **Point of Injection.** The last accessible sampling point prior to waste being released into the



subsurface environment through an ~~an~~ ~~Class V~~ injection well. For example, the point of injection for a Class V septic system might be the distribution box. For a drywell, it is likely to be the well bore itself. (5-3-03)( )

**74. Pressure.** The total load or force per unit area acting on a surface. ( )

**75. Project.** A group of wells in a single operation. ( )

**4376. Radioactive Material.** Any material, solid, liquid or gas which emits radiation spontaneously. Radioactive geologic materials occurring in their natural state are not included. (7-1-93)

**4477. Radioactive Waste.** Any fluid which contains radioactive material in concentrations which exceed those established for discharges to water in an unrestricted area by 10 CFR 20.1302.(b)(2)(i) and Table 2 in Appendix B of 10 CFR 20. (5-3-03)

**78. RCRA.** The Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976. ( )

**4579. Remediation Project.** Removal, treatment or isolation of a contaminant from ground water through actions or the removal or treatment of a contaminant in ground water as approved by the Director. (5-3-03)

~~46. Replacement Well. An injection well constructed to replace an existing injection well, authorized for use under these rules, that meets the following criteria: (7-1-93)~~

~~a. The replacement well is located within two hundred (200) feet of the existing injection well. (7-1-93)~~

~~b. The injected fluids are from the same source as the fluids injected through the existing injection well. (7-1-93)~~

~~c. The injected fluids are of equal or better quality than the fluids injected through the existing well. (7-1-93)~~

~~d. Construction features of the replacement well are similar to the features of the existing well and meet or exceed minimum well construction standards. (7-1-93)~~

~~e. The distance between the point of injection and the nearest boundary of the receiving aquifer is at least as great as that distance for the existing injection well. (7-1-93)~~

~~f. The existing injection well is abandoned by an approved method within thirty (30) days of completion of construction of the replacement well. (7-1-93)~~

**4780. Sanitary Waste.** Any liquid or solid waste originating from humans and human activities, such as wastes collected from toilets, showers, wash basins, floor drains, sinks used for cleaning domestic areas, sinks used for food preparation, clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses, and utensils are cleaned. Any fluid generated through residential (domestic) activities, such as food preparation, cleaning and personal hygiene. This term does not include industrial, municipal, commercial, or other non-residential process fluids. (5-3-03)( )

**481. Schedule of Compliance.** A schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with the standards. (7-1-93)

**4982. Septic System.** An injection well that is used to inject sanitary waste below the surface. A septic system is typically comprised of a septic tank and subsurface fluid distribution system or disposal system. (5-3-03)

**5083. Shallow Injection Well.** An injection well which is less than or equal to eighteen (18) feet in vertical depth below land surface. (7-1-93)

**84. Site.** The land or water area where any “facility or activity” is physically located or conducted, including adjacent land used in connection with the facility or activity. ( )

**5185. State.** The state of Idaho. (7-1-93)

**86. Stratum (plural strata).** A single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material. ( )

**87. Subsidence.** The lowering of the natural land surface in response to: Earth movements; lowering of fluid pressure; removal of underlying supporting material by mining or solution of solids, either artificially or from natural causes; compaction due to wetting (Hydrocompaction); oxidation of organic matter in soils; or added load on the land surface. ( )

**5288. Subsurface Fluid Distribution System.** An assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground, ~~usually part of a septic system.~~ (5-3-03)( )

**89. Surface Casing.** The largest diameter permanent pipe string set and sealed following setting of the conductor pipe. ( )

**5390. Surface Runoff Water.** Runoff water from the natural ground surface and cropland. Runoff from urbanized areas such as streets, parking lots, airports, and runoff from animal feedlots, agricultural processing facilities and similar facilities is not included within the scope of this phrase. (7-1-93)

**91. Total Dissolved Solids.** The total dissolved (filterable) solids as determined by the use of the method specified in 40 CFR part 136. ( )

**92. Transferor.** The owner or operator transferring ownership and/or operational control of the well. ( )

**93. UIC.** The Underground Injection Control program under Part C of the Safe Drinking Water Act, including an “approved State program.” ( )

**5494. Temporary Abandonment.** The prevention of injection by use of a removable or retrievable device, such as a packer or cap. (7-1-93)

**5595. Unauthorized ~~Abandonment~~ Decommission.** The ~~permanent abandonment~~ decommissioning of any injection well that has not received the approval of the Department prior to ~~abandonment~~ decommissioning, or was not ~~abandoned~~ decommissioned in a method approved by the Director. These wells may have to be properly decommissioned when discovered by the Director to ensure that the well prevents commingling of aquifers or is no longer capable of injection. (7-1-93)( )

**96. Underground Injection.** See “injection.” ( )

**97. Underground Source of Drinking Water (USDW).** An aquifer or its portion: ( )

**a. Which:** ( )

**i. Supplies any public water system; or** ( )

**ii. Contains a sufficient quantity of ground water to supply a public water system; or** ( )

**(1) Currently supplies drinking water for human consumption; or** ( )

**(2) Contains fewer than ten thousand (10,000) mg/l total dissolved solids; and** ( )

**b. Which is not an exempted aquifer.** ( )

~~56~~98. **Unreasonable Contamination.** Endangerment of a ~~drinking water source~~ USDW or the health of persons or other beneficial uses by injection. See “endangerment.” (7-1-93)( )

99. USDW. Underground Source of Drinking Water. ( )

~~57~~100. **Water Quality Standards.** Refers to those standards found in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, “Water Quality Standards” and IDAPA 58.01.11, “Ground Water Quality Rule.” (5-3-03)

~~58~~101. **Well.** For the purposes of these rules, “well” means “injection well.” (5-3-03)

102. Well Monitoring. The measurement, by on-site instruments or laboratory methods, of the quality of water in a well. ( )

011. -- ~~02~~14. (RESERVED)

[Moved from Section 065]

~~06~~15. VIOLATIONS, FORMAL NOTIFICATION AND ENFORCEMENT (RULE ~~6~~15).

01. **Violations.** It shall be a violation of these rules for any owner or operator to: (7-1-93)
- a. Fail to comply with a permit or authorization, or terms or conditions thereof; (5-3-03)
  - b. Fail to comply with applicable standards for water quality; (7-1-93)
  - c. Fail to comply with any permit application notification or filing requirement; (7-1-93)
  - d. Knowingly make any false statement, representation or certification in any application, report, document or record filed pursuant to these rules, or terms and conditions of an issued permit; (7-1-93)
  - e. Falsify, tamper with or knowingly render inaccurate any monitoring device or method required to be maintained or utilized by the terms and conditions of an issued permit; (7-1-93)
  - f. Fail to respond to any formal notification of a violation when a response is required; or (5-3-03)
  - g. ~~Abandon~~ Decommission a well in an unauthorized manner. (7-1-93)( )

02. **Additional.** It shall be a violation of these rules for any person to construct, operate, maintain, convert, plug, ~~abandon~~ decommission or conduct any other activity in a manner which results or may result in the unauthorized injection of a hazardous waste or of a radioactive waste by an injection well. (7-1-93)( )

03. **Formal Notification.** Formal notification of violations may be communicated to the owner or operator with a letter, a notice of violation, a compliance or enforcement order or other appropriate means. (7-1-93)

04. **Enforcement.** Violation of any of the provisions of the ~~Waste Disposal and~~ Injection Well Act (Chapter 39, Title 42, Idaho Code) or of any rule, regulation, standard or criteria pertaining to the ~~Waste Disposal and~~ Injection Well Act may result in the Director initiating an administrative enforcement action as provided under Chapters 17 and 39, Title 42, Idaho Code. (5-3-03)( )

~~016~~ -- ~~019~~. (RESERVED)

[Moved from Section 070]

~~0720.~~ HEARING BEFORE THE WATER RESOURCE BOARD (RULE ~~720~~).

**01. General.** All hearings before the Idaho Water Resource Board shall be conducted in accordance with Chapter 52, Title 67, Idaho Code, at a place convenient to the owner and/or operator. For purposes of such hearings, the Idaho Water Resource Board or its designated hearing officer shall have power to administer oaths, examine witnesses, and issue in the name of the said Board subpoenas requiring testimony of witnesses and the production of evidence relevant to any matter in the hearing. Judicial review of the final determination by the Idaho Water Resource Board may be secured by the owner by filing a petition for review as prescribed by Chapter 52, Title 67, Idaho Code, in the District Court of the county where the injection well is situated or proposed to be located. The petition for review shall be served upon the Chairman of the Idaho Water Resource Board and upon the Attorney General. (7-1-93)

**02. Hearings on Conditional Permits, Disapproved Applications, or Petitions for Exemption.** Any owner or operator aggrieved by the approval or disapproval of an application, or by conditions imposed upon a permit, or any person aggrieved by the Director's decision on a petition for exemption under Rule ~~725~~ of these rules, shall be afforded an opportunity for a hearing before the Idaho Water Resource Board or its designated hearing officer. Written notice of such grievance shall be transmitted to the Director within thirty (30) days after receipt of notice of such approval, disapproval or conditional approval. Such hearing shall be held for the purpose of determining whether the permit shall be issued, whether the conditions imposed in a permit are reasonable, whether a change in circumstances warrants a change in conditions imposed in a valid permit, or whether the Director's decision on a petition for exemption should not be changed. (~~7-1-93~~)( )

**03. Hearings on Permit Cancellations.** When the Director has reason to believe the operation of an injection well for which a permit has been issued is interfering with the right of the public to withdraw water for beneficial uses, or is causing unreasonable contamination of a drinking or other ground water source as provided for in Title 42, Chapter 39, Idaho Code, the permit may be canceled by the Director. Prior to the cancellation of such permit there shall be a hearing before the Water Resource Board for the purpose of determining whether or not the permit should be canceled. At such hearing, the Director shall be the complaining party. At least thirty (30) days prior to the hearing, a notice, which shall be in accordance with Chapter 52, Title 67, Idaho Code, shall be sent by certified mail to the owner or operator whose permit is proposed to be canceled. The Board shall affirm, modify, or reject the Director's decision and make its decision in the form of an order to the Director. (7-1-93)

~~021. -- 024.~~ (RESERVED)

[Moved from Section 075]

~~0725.~~ EXEMPTION FROM DRINKING WATER SOURCE DESIGNATION (RULE ~~725~~).

**01. General.** Most aquifers in Idaho are likely to fit within the definition of "~~drinking water source underground source of drinking water.~~" (~~Rule Subsection 010.15~~). Some portions of these aquifers, however, may be isolated or contain water of such quality that they will not be utilized as drinking water sources. Other deep ground water systems may contain water of such poor quality that they will not be used for drinking water. Under the authorities of section 1805, Title 42, Idaho Code, the Director may determine "the most effective means by which these water resources may be applied for the benefit of the people of this state." As such, ~~these~~ these aquifers, portions of aquifers and deep ground water systems may be employed in the best interests of Idaho as disposal sites for certain contaminants, as authorized for disposal under these rules. However, injection must be consistent with the requirements of the Ground Water Quality Act of 1989 and the Idaho Ground Water Quality Plan. (~~7-1-93~~)( )

**02. ~~Most Effective Means.~~** ~~Under the authorities of Section 1805, Title 42, Idaho Code, the Director may determine, "the most effective means by which these water resources may be applied for the benefit of the people of this state." The Director may exempt an aquifer or portion thereof from a drinking water source designation if:~~ Petition Process for Aquifer Exemptions. The Department or any other person or entity may petition to exempt an aquifer from the designation as a drinking water source. The Department and the Idaho Department of Environmental Quality both have jurisdictional responsibilities for processing a petition for aquifer exemption. Therefore, the applicant must first submit information to the Department and then to the Idaho Department of Environmental

Quality. The petition process is broken down into the following steps: ( )

a. ~~It is not currently a drinking water source; and~~ The petition is first submitted to the Department where it is reviewed. If the petition is approved, the Department shall obtain U.S EPA concurrence to support the approval. (7-1-93)( )

b. ~~It will not be utilized as a drinking water source in the future because:~~ Upon approval and U.S. EPA concurrence, the Department will direct the applicant to initiate the aquifer categorization process with the Idaho Department of Environmental Quality to categorize the aquifer as "other" and adopt less strict water quality standards for the exempted zone which ultimately allows for the injection of fluids that exceed the water quality standards set forth in IDAPA 58.01.11 "Ground Water Quality Rule." To be considered for exemption by the Department, an aquifer must meet the criteria set forth in Subsection 025.04 of these rules. The petition for exemption shall be submitted to the Department and must contain the general information found in Subsection 025.05 and the pertinent specific information found in Section 025.06 of these rules. Once the petition has been reviewed by the Department, the applicant will be notified as to whether or not the aquifer meets the criteria for exemption. If the aquifer does meet the criteria for exemption the notification will direct the applicant to the Idaho Department of Environmental Quality to initiate the procedures for categorizing an aquifer as per IDAPA 58.01.11 "Ground Water Quality Rule". If the aquifer does not meet the criteria for exemption the notification will deny the petition and list the reasons for the denial. (7-1-93)( )

i. ~~It is situated at such a depth or location that recovery for drinking water purposes is economically or technologically impractical; or~~ (7-1-93)

ii. ~~Is so contaminated that it would be economically or technologically impractical to render the water fit for human consumption; or~~ (7-1-93)

iii. ~~The total dissolved solids content of the ground water is greater than three thousand (3,000) mg/l and it is not reasonably expected to supply a public water system.~~ (7-1-93)

e. ~~The Director shall not provide an exemption for any aquifer categorized as "Sensitive Resource" or "General Resource" by the Department of Environmental Quality. Procedures for Recategorizing an Aquifer to "Other Resource," (IDAPA 58.01.11, "Ground Water Quality Rule," Section 350), may need to be completed prior to any petition for exemption.~~ (5-3-03)

03. Petition for Exemption Identification of Underground Sources of Drinking Water and Exempted Aquifers. (40 CFR 144.7). ~~Any owner or operator proposing to inject contaminants authorized under Rule Subsection 025.03 into an aquifer or portion thereof that is within the definition of a drinking water source, but is not currently used in that manner, and is not likely to be used as such in the future, may petition the Director for an exemption to that designation. The petition for exemption shall contain:~~ (7-1-93)( )

a. ~~Reason or reasons for the exemption;~~ The Director may identify (by narrative description, illustrations, maps, or other means) and shall protect as underground sources of drinking water, all aquifers and parts of aquifers which meet the definition of "underground source of drinking water" in Section 010 of these rules, except to the extent there is an applicable aquifer exemption under Paragraph 025.03.b. of this rule. If an aquifer has not been specifically identified by the Director, it is an underground source of drinking water if it meets the definition in Section 010 of these rules. (7-1-93)( )

b. ~~A description of the aquifer or part thereof proposed for exemption, to include the vertical and lateral limits of the aquifer and water table gradient or potentiometric surface;~~ The Director may identify (by narrative description, illustrations, maps, or other means) and describe in geographic and/or geometric terms (such as vertical and lateral limits and gradient) which are clear and definite, all aquifers or parts thereof which the Director proposes to designate as exempted aquifers using the criteria in Subsection 025.04 of these rules. (7-1-93)( )

e. ~~The expected direction and rate of movement of the contaminants;~~ (7-1-93)

d.c. ~~A description of the geology to include all aquifers or ground water systems, lithologies and controlling features;~~ Subsequent to program approval or promulgation, the Director may, after notice and opportunity

for a public hearing, identify additional exempted aquifers. For approved State programs exemption of aquifers identified: (7-1-93)( )

i. Under Paragraph 025.04.b. shall be treated as a program revision under Section 40 CFR 145.32: ( )

ii. Under Paragraph 025.04.c. shall become final if the Director submits the exemption in writing to the U.S. Environmental Protection Agency and the U.S. environmental Protection Agency has not disapproved the designation within forty-five (45) days. Any disapproval by the U.S. Environmental Protection Agency shall state the reasons and shall constitute final Agency action for purposes of judicial review. ( )

e. Ground water resources in the area overlying the aquifer proposed for exemption; (7-1-93)

f. Any other information that the Director may deem necessary to make a decision. (7-1-93)

g. Confirmation that the aquifer has been designated "Other Resource" by the DEQ. (5-3-03)

**04. Director's Action.** ~~The Director shall provide legal notice of the proposed exemption in a newspaper or newspapers of general circulation in the area that may be affected by the exemption. The notice shall provide locations where the petition for exemption may be reviewed and shall provide for a comment period of thirty (30) days.~~ **Criteria for Exempted Aquifers.** (40 CFR 146.4) An aquifer or a portion thereof which meets the criteria for an "underground source of drinking water" in Section 010 may be determined under Subsection 025.03 of these rules to be an "exempted aquifer" for Class II wells if it meets the criteria in Paragraphs 025.03.a. through 025.03.c. of these rules.k (7-1-93)( )

a. ~~A fact finding hearing may be requested by any person or persons that could be affected by the exemption. All hearings shall be conducted in accordance with the procedures set forth in Rule Subsection 040.02 of these rules.~~ **It does not currently serve as a source of drinking water; and** (7-1-93)( )

b. ~~A copy of the petition for exemption will be submitted to the Director of the Department of Environmental Quality for recommendations. A written notice of the recommendations shall be provided to the Director of the Department of Water Resources within thirty (30) days of receipt, or within fifteen (15) days of any hearing pertaining to the petition.~~ **It cannot now and will not in the future serve as a source of drinking water because:** (7-1-93)( )

i. It is mineral, hydrocarbon or geothermal energy producing, or can be demonstrated by a permit applicant as part of a permit application for a Class II or III operation to contain minerals or hydrocarbons that considering their quantity and location are expected to be commercially producible. ( )

ii. It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical; ( )

iii. It is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption; or ( )

c. The total dissolved solids content of the ground water is more than three thousand (3,000) and less than ten thousand (10,000) mg/l and it is not reasonably expected to supply a public water system. ( )

e. ~~After due consideration of the petition and upon receipt of the recommendation of the Director of the Department of Environmental Quality, the Director shall either approve or disapprove the petition for exemption.~~ (7-1-93)

**05. Hearing Before the Idaho Water Resource Board.** ~~Any person aggrieved by the Director's decision shall have the right to a hearing before the Idaho Water Resource Board pursuant to Rule Subsection 070.01 of these rules.~~ **General Information to be Submitted with a Petition for Exemption.** Applicants requesting exemptions must provide the following general information: (7-1-93)( )

a. A map of the proposed exempted area in a format acceptable to the director. The map must show the boundaries of the area to be exempted, the topography, and other natural surface features and surface water locations. Any map which precisely delineates the proposed exempted area is acceptable. ( )

b. A written description of the proposed exempted aquifer including: ( )

i. Name of formation of aquifer. ( )

ii. Subsurface depth or elevation of zone. ( )

iii. Vertical confinement from other underground sources of drinking water. ( )

iv. Thickness of proposed exempted aquifer. ( )

v. Area of exemption (e.g., acres, square miles, etc.). ( )

vi. A water quality analysis of the horizon to be exempted. ( )

c. In addition to the above descriptive information concerning the aquifer, all exemption requests must demonstrate that the aquifer “. . . does not currently serve as a source of drinking water.” as per Paragraph 025.04.a. of these rules. To demonstrate this, the applicant must survey the proposed exempted area to identify any water supply wells which tap the proposed exempted aquifer. The area to be surveyed should cover the exempted zone and a buffer zone outside the exempted area. The buffer zone should extend a minimum of a one-quarter (1/4) mile from the boundary of the exempted area. Any water supply wells located should be identified on the map showing the proposed exempted area. If no water supply wells would be affected by the exemption, the request should state that a survey was conducted and no water supply wells are located which tap the aquifer to be exempted within the proposed area. If the exemption pertains to only a portion of an aquifer, a demonstration must be made that the waste will remain in the exempted portion. Such a demonstration should consider among other factors, the pressure in the injection zone, the waste volume, injected waste characteristics (i.e., specific gravity, persistence, etc.) in the life of the facility. The model described in Subparagraph 045.07.a.ii. of these rules or a comparable aquifer model acceptable to the Director shall be used in this demonstration. ( )

**06. Specific Information to be Submitted with a Petition for Exemption. ( )**

a. The following information shall be submitted with a petition for exemption for an aquifer meeting the criteria in Subparagraph 025.04.b.i. of these rules. ( )

i. If the proposed exemption is to allow a Class II enhanced oil recovery well operation to continue, the fact that it has a history of hydrocarbon or mineral production will be sufficient proof that this standard is met. Many times it may be necessary to slightly expand an existing well field to recover minerals or hydrocarbons. In this case, the applicant must show only that the exemption request is for expanding the previously exempted aquifer and state his reasons for believing that there are commercially producible quantities of minerals within the expanded area. ( )

ii. For Class II wells, a demonstration of commercial producibility shall be made as follows: ( )

(1) For a Class II well to be used for enhanced oil recovery processes in a field or project containing aquifers from which hydrocarbons were previously produced, commercial producibility shall be presumed by the Director upon a demonstration by the applicant of historical production having occurred in the project area or field. ( )

(2) For Class II wells not located in a field or project containing aquifers from which hydrocarbons were previously produced, information such as logs, core data, formation description, formation depth, formation thickness and formation parameters such as permeability and porosity shall be considered by the Director, to the extent such information is available. ( )

(3) Exemptions relating to any new Class II wells which will be injecting into a producing or

previously produced horizon should include the following types of information: ( )

- (4) Production history of the well if it is a former production well which is being converted. ( )
- (5) Description of any drill stem tests run on the horizon in question. This should include information on the amount of oil and water produced during the test. ( )
- (6) Production history of other wells in the vicinity which produce from the horizon in question.( )
- (7) Description of the project, if it is an enhanced recovery operation including the number of wells and their location. ( )

**b.** The following information shall be submitted with a petition for exemption for an aquifer meeting the criteria in Subparagraph 025.04.b.ii. of these rules. Consideration of an aquifer exemption request under this provision would depend on the availability of alternative supplies, the adequacy of alternatives to meet present and future needs, and a demonstration that there are major costs for treatment and or development associated with the use of the aquifer. The economic evaluation, submitted by the applicant, should consider the above factors, and these that follow: ( )

- i. Distance from the proposed exempted aquifer to public water supplies. ( )
- ii. Current sources of water supply for potential users of the proposed exempted aquifer. ( )
- iii. Availability and quality of alternative water supply sources. ( )
- iv. Analysis of future water supply needs within the general area. ( )
- v. Depth of proposed exempted aquifer. ( )
- vi. Quality of the water in the proposed exempted aquifer. ( )
- vii. Costs to develop the proposed exempted aquifer as a water supply source including any treatment costs and costs to develop alternative water supplies. This should include costs for well construction, transportation, and water treatment for each source. ( )

**c.** The following information shall be submitted with a petition for exemption for an aquifer meeting the criteria in Subparagraph 025.04.b.iii. of these rules. Economic considerations will factor into the Director's decision on aquifer exemption requests under this section. Unlike the previous section, the economics involved are controlled by the cost of technology to render water fit for human consumption. Treatment methods can usually be found to render water potable. However, costs of that treatment may often be prohibitive either in absolute terms or compared to the cost to develop alternative water supplies. The Directors evaluation of aquifer exemption requests under this section will consider the following information submitted by the applicant: ( )

- i. Concentrations and types of contaminants in the aquifer. ( )
- ii. Source of contamination. ( )
- iii. Whether contamination source has been abated. ( )
- iv. Extent of contaminated area. ( )
- v. Probability that the contaminant plume will pass the through proposed exempted area. ( )
- vi. Ability of treatment to remove contaminants from ground water. ( )
- vii. Chemical content of proposed injected fluids. ( )



- viii. Current water supply in the area. ( )
- ix. Alternative water supplies. ( )
- x. Costs to develop current and probable future water supplies, cost to develop water supply from proposed exempted aquifer. This should include well construction costs, transportation costs, water treatment costs, etc. ( )
- xi. Projections on future use of the proposed aquifer. ( )
- d. The following information shall be submitted with a petition for exemption for an aquifer meeting the criteria in Paragraph 025.04.c. of these rules. An application under this provision must include information about the quality and availability of water from the aquifer proposed for exemption. Also, the exemption request must analyze the potential for public water supply use of the aquifer. This may include: a description of current sources of public water supply in the area, a discussion of the adequacy of current water supply sources to supply future needs, population projections, economy, future technology, and a discussion of other available water supply sources within the area. ( )

026. -- 029. (RESERVED)

*[Moved from Section 076]*

**07630. SEVERABILITY (RULE 30).**

The provisions of these rules are severable. If any provisions or the application of such provisions to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity or remaining portions of these rules. (7-1-93)

031. -- 034. (RESERVED)

*[Moved from Section 025]*

**0235. CLASSIFICATION OF INJECTION WELLS—~~AUTHORIZATIONS, PROHIBITIONS AND EXEMPTIONS~~ (RULE 235).**

01. **Classification of Injection Wells.** For the purposes of these rules, injection wells are classified as follows: (7-1-93)

a. ~~Class I: —Wells used to inject hazardous, radioactive, industrial, or municipal wastes beneath the lowermost formation containing a drinking water source.~~ (5-3-03)( )

i. Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation containing, within one-quarter (1/4) mile of the well bore, an underground source of drinking water. ( )

ii. Other industrial and municipal disposal wells which inject fluids beneath the lowermost formation containing, within one-quarter (1/4) mile of the well bore, an underground source of drinking water. ( )

iii. Radioactive waste disposal wells which inject fluids below the lowermost formation containing an underground source of drinking water within one-quarter (1/4) mile of the well bore. ( )

b. ~~Class II—Wells used to inject fluids which are brought to the surface with conventional oil and gas production, utilized for enhanced recovery of oil or gas, or stored as liquid hydrocarbons at standard temperature and pressure in the injection formation.~~ Wells used to inject fluids: (7-1-93)( )

i. Which are brought to the surface in connection with natural gas storage operations, or conventional

oil or natural gas production and may be commingled with waste waters from gas plants, dehydration stations, or compressor stations which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection. ( )

ii. For enhanced recovery of oil or natural gas; and ( )

ii. For storage of hydrocarbons which are liquid at standard temperature and pressure. ( )

c. ~~Class III—Wells which inject for the extraction of minerals unless used for solution mining in conventional mines.~~ Wells used to inject fluids for extraction of minerals including: (7-1-93)( )

i. Mining of sulfur by the Frasch process; ( )

ii. In situ production of uranium or other metals; this category includes only in-situ production from ore bodies which have not been conventionally mined. Solution mining of conventional mines such as stopes leaching is included in Class V. ( )

iii. Solution mining of salts or potash. ( )

d. ~~Class IV: —Wells used to inject hazardous or radioactive wastes into or above a formation which contains a drinking water source.~~ (7-1-93)( )

i. Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste into a formation which within one-quarter (1/4) mile of the well contains an underground source of drinking water. ( )

ii. Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste above a formation which within one-quarter (1/4) mile of the well contains an underground source of drinking water. ( )

iii. Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to dispose of hazardous waste, which cannot be classified under Subparagraphs 035.01.a.i. or 035.01.d.i. or 035.01.d.ii. of this rule (e.g., wells used to dispose of hazardous waste into or above a formation which contains an aquifer which has been exempted pursuant to Section 025 of these rules). ( )

e. Class V -- All injection wells not included in Classes I, II, III, ~~or~~ IV, or VI. (7-1-93)( )

f. Class VI. ( )

Wells that are not experimental in nature that are used for geologic sequestration of carbon dioxide beneath the lowermost formation containing a USDW; or, wells used for geologic sequestration of carbon dioxide that have been granted a waiver of the injection depth requirements pursuant to requirements at 40 CFR Section 146.95; or, ( )

ii. Wells used for geologic sequestration of carbon dioxide that have received an expansion to the areal extent of an existing Class II enhanced oil recovery or enhanced gas recovery aquifer exemption pursuant to Section 025 of these rules. ( )

02. **Subclassification.** Class V wells are subclassified as follows: (7-1-93)

a. \*5A5-Electric Power Generation. (7-1-93)

b. \*5A6-Geothermal Heat. (7-1-93)

c. \*5A7-Heat Pump Return. (7-1-93)

- d. 5A8-Aquaculture Return Flow. (7-1-93)
- e. \*5A19-Cooling Water Return. (7-1-93)
- f. 5B22-Saline Water Intrusion Barrier. (7-1-93)
- g. \*5D2-Storm Runoff. (7-1-93)
- h. 5D3-Improved Sinkholes. (7-1-93)
- i. \*5D4-Industrial Storm Runoff. (7-1-93)
- j. \*5F1-Agricultural Runoff Waste. (7-1-93)
- k. \*5G30-Special Drainage Water. (7-1-93)
- l. 5N24<sup>1</sup>-Radioactive Waste Disposal. (~~5-3-03~~)( )
- m. \*5R21-Aquifer Recharge. (7-1-93)
- n. 5S23-Subsidence Control. (7-1-93)
- o. 5W9-Untreated Sewage. (7-1-93)
- p. 5W10-Cesspools. (7-1-93)
- q. \*5W11-Septic Systems (General). (7-1-93)
- r. \*5W12-~~Waste~~ Water Treatment Plant Effluent. (~~7-1-93~~)( )
- s. \*5W20-Industrial Process Water. (7-1-93)
- t. 5W31-Septic Systems (Well Disposal). (7-1-93)
- u. \*5W32-Septic System (Drainfield). (7-1-93)
- v. \*5X13-Mine Tailings Backfill. (7-1-93)
- w. 5X14-Solution Mining. (7-1-93)
- x. 5X15-In-Situ Fossil Fuel Recovery. (7-1-93)
- y. 5X16-Spent Brine Return Flow. (7-1-93)
- z. \*5X25-Experimental Technology. (7-1-93)
- aa. \*5X26-Aquifer Remediation. (7-1-93)
- bb. \*5X27-Other Wells. (7-1-93)
- cc. \*5X28<sup>1</sup>-Motor Vehicle Waste Disposal Wells. (~~5-3-03~~)( )
- dd. 5X29-Abandoned Water Wells. (5-3-03)

\*<sup>1</sup> The construction and operation of ~~W~~wells in these subclasses ~~are~~ is currently ~~inventoried~~ illegal in Idaho.

~~035. APPLICATION FOR PERMIT TO CONSTRUCT, MODIFY OR MAINTAIN AN INJECTION WELL (RULE 35).~~

~~01. Application Requirements for All Class V Wells, Except Those Class V Wells Authorized Without Permit. (7-1-93)~~

~~a. No person shall continue to maintain or use an unauthorized injection well after the effective date given in Section 42-3903, Idaho Code, unless a permit therefor has been issued by the Director. No injection well requiring a permit under Rule 25 shall be constructed, modified or maintained after the effective date given in Section 42-3903, Idaho Code, unless a permit therefor has been issued by the Director. No injection well requiring a permit shall continue to be used after the expiration of the permit issued for such well unless another application for permit therefor has been received by the Director. All applications for permit shall be on forms furnished by the Director. (5-3-03)~~

~~b. Each application for permit to construct, modify or maintain an injection well, as required by these rules, shall be accompanied by a filing fee as specified in Section 42-3905, Idaho Code, payable to the Department of Water Resources. For the purposes of these rules, all wells or groups of wells associated with a "Remediation Project" may be administered as one (1) "well" at the discretion of the Director. (5-3-03)~~

~~02. Application Information Required. An applicant shall submit the following information to the Director for all injection wells to be authorized by permit, unless the Director determines that it is not needed in whole or in part, and issues a written waiver to the applicant: (5-3-03)~~

- ~~a. Facility name and location; (7-1-93)~~
- ~~b. Name, address and phone number of the well operator; (7-1-93)~~
- ~~c. Class, subclass and function of the injection well (see Rule 25); (7-1-93)~~
- ~~d. Latitude/longitude or legal description of the well location to the nearest ten (10) acre tract; (5-3-03)~~
- ~~e. Ownership of the well; (7-1-93)~~
- ~~f. County in which the injection well is located; (7-1-93)~~
- ~~g. Construction information for the well; (7-1-93)~~
- ~~h. Quantity and general character of the injected fluids; (7-1-93)~~
- ~~i. Status of the well (to be constructed, active, temporarily abandoned, etc.); (7-1-93)~~
- ~~j. A topographic map or aerial photograph extending one (1) mile beyond property boundaries, depicting: (7-1-93)~~
  - ~~i. Location of the injection well and associated facilities described in the application; (7-1-93)~~
  - ~~ii. Locations of other injection wells; (7-1-93)~~
  - ~~iii. Approximate drainage area, if applicable; (7-1-93)~~
  - ~~iv. Hazardous waste facilities, if applicable; (7-1-93)~~
  - ~~v. All wells used to withdraw drinking water; (7-1-93)~~
  - ~~vi. All other wells, springs and surface waters. (7-1-93)~~

- ~~k. Distance and direction to nearest domestic well; (7-1-93)~~
- ~~l. Depth to ground water; and (5-3-03)~~
- ~~m. Alternative methods of waste disposal. (7-1-93)~~
- ~~03. **Additional Information.** The Director may require the following additional information for Class V injection wells to assess potential effects of injection: (5-3-03)~~
- ~~well: a. A topographic map showing locations of the following within a two (2) mile radius of the injection well: (5-3-03)~~
- ~~i. All wells producing water; (7-1-93)~~
  - ~~ii. All exploratory and test wells; (7-1-93)~~
  - ~~iii. All other injection wells; (7-1-93)~~
  - ~~iv. Surface waters (including man-made impoundments, canals and ditches); (7-1-93)~~
  - ~~v. Mines and quarries; (7-1-93)~~
  - ~~vi. Residences; (7-1-93)~~
  - ~~vii. Roads; (7-1-93)~~
  - ~~viii. Bedrock outcrops; and (5-3-03)~~
  - ~~ix. Faults and fractures. (7-1-93)~~
- ~~b. Additional maps or aerial photographs of suitable scale to accurately depict the following: (7-1-93)~~
- ~~i. Location and surface elevation of the injection well described in this permit; (7-1-93)~~
  - ~~ii. Location and identification of all facilities within the property boundaries; (7-1-93)~~
  - ~~iii. Locations of all wells penetrating the proposed injection zone or within a one quarter (1/4) mile radius of the injection well; (7-1-93)~~
  - ~~iv. Maps and cross sections depicting all underground sources of drinking water to include vertical and lateral limits within a one quarter (1/4) mile radius of the injection well, their position relative to the injection zone and the direction of water movement; local geologic structures; regional geologic setting. (7-1-93)~~
- ~~c. A comprehensive report of the following information: (7-1-93)~~
- ~~i. A tabulation of all wells penetrating the proposed injection zone, listing owner, lease holder and operator; well identification (permit) number; size, weight, depth and cementing data for all strings of casing; (7-1-93)~~
  - ~~ii. Description of the quality and quantity of fluids to be injected; (7-1-93)~~
  - ~~iii. Geologic, hydrogeologic, and physical characteristics of the injection zone and confining beds; (5-3-03)~~
  - ~~iv. Engineering data for the proposed injection well; (7-1-93)~~

- v. ~~Proposed operating pressure;~~ (7-1-93)
- vi. ~~A detailed evaluation of alternative disposal practices;~~ (7-1-93)
- vii. ~~A plan of corrective action for wells penetrating the zone of injection, but not properly sealed or abandoned; and~~ (5-3-03)
- viii. ~~Contingency plans to cope with all shut ins or well failures to prevent the migration of unacceptable fluids into underground sources of drinking waters.~~ (7-1-93)
- d. ~~Name, address and phone number of person(s) or firm(s) supplying the technical information and/or designing the injection well;~~ (7-1-93)
- e. ~~Proof that the applicant is financially responsible, through a performance bond or other appropriate means, to abandon the injection well in accordance with the conditions of the permit.~~ (5-3-03)

~~04. **Other Information.** The Director may require of any applicant such additional information as may be necessary to demonstrate that the proposed or existing injection well will not endanger drinking water sources. The Director will not complete the processing of an application for which additional information has been requested until such time as the additional information is supplied. The Director may return any incomplete application and will not process such application until such time as the application is received in complete form.~~ (7-1-93)

036. -- 039. (RESERVED)

~~0340.~~ AUTHORIZATIONS, PROHIBITIONS AND EXEMPTIONS.

~~01. **Authorizations.** Construction and use of Class V deep injection wells may be authorized by permit as approved by the Director in accordance with these rules.~~ ( )

~~02. **Prohibitions.**~~ ( )

a. These rules prohibit the permitting, construction, or use of any Class I, ~~II~~, III ~~or~~ IV, ~~or~~ VI injection well. (7-1-93)( )

~~b. **Prohibition of injection of hazardous and of radioactive wastes (Class IV)**—Construction of a well to be used for injection of hazardous wastes or of radioactive wastes into or above a drinking water source, or injection of hazardous wastes or of radioactive wastes through an existing injection well into or above a drinking water source is prohibited.~~ (7-1-93)

~~e. **Construction and use of Class V deep injection wells may be authorized by permit as approved by the Director in accordance with these rules.**~~ (5-3-03)

~~d. **Construction of large capacity cesspools or motor vehicle waste disposal wells is prohibited. Construction and use of other Class V shallow injection wells are authorized by these rules without permit provided that:**~~ (5-3-03)

~~i. **Required inventory information is submitted to the Director pursuant to Rule 30.**~~ (7-1-93)

~~ii. **Use of the shallow injection well shall not result in unreasonable contamination of a drinking water source or cause a violation of surface or ground water quality standards that would affect a beneficial use.**~~ (5-3-03)

~~e. **Class V shallow injection wells used for the disposal of waste water as defined in Idaho Department of Environmental Quality Rule, IDAPA 58, Title 01, Chapter 03, "Individual/Subsurface Sewage Disposal Rules," are exempt from the authorization requirements of these rules, but are subject to the IDAPA 58.01.03.000, et seq., "Individual/Subsurface Sewage Disposal Rules," Title 39, Chapter 1 and Title 39, Chapter 36, Idaho Code.**~~ (7-1-93)

~~f. State or local entities involved in highway and street construction and maintenance are exempt from the permit requirements for shallow Class V wells, but shall comply with all other requirements of these rules. (5-3-03)~~

~~g. Mine tailings backfill (5X13) wells are authorized by rule as part of mining operations because federal studies show the threat of endangerment from use of these wells is low. They are therefore exempt from the ground water quality standards and permitting requirements of these rules provided that their use is limited to the injection of mine tailings only. The use of any 5X13 well(s) shall not result in water quality standards at points of diversion for beneficial use being exceeded or otherwise affect a beneficial use. Should water quality standards be exceeded or beneficial uses be affected, the Director may order the wells to be put under the permit requirements of these rules, or the wells may be required to be remediated or closed. As a condition of their use, the Director may require the construction and sampling of monitoring wells by the owner/operator. 5X13 wells are subject to the inventory requirements of Rule Subsection 030.01. (5-3-03)~~

~~h. All large capacity cesspools must be properly abandoned by January 1, 2005. A cease and desist order may be issued to the owner or the operator when a large capacity cesspool is found to be a threat to the ground water resources as described in Subsection 030.03. (5-3-03)~~

~~i. All motor vehicle waste disposal wells must be properly abandoned by January 1, 2005. A cease and desist order may be issued to the owner or the operator when a motor vehicle waste disposal well is found to be a threat to the ground water resources as described in Subsection 030.03. (5-3-03)~~

b. Any underground injection through a class II injection well, except as authorized by permit issued under the UIC program, is prohibited. The construction or use of any class II injection well required to have a permit is prohibited until the permit has been issued. (40 CFR 144.11) ( )

c. No owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any other injection activity in a manner that allows or causes the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary or secondary drinking water regulation, under IDAPA 58.01.11, "Ground Water Quality Rule," Section 200 or may otherwise adversely affect the health of persons. The applicant for a permit shall have the burden of showing that the requirements of Paragraph 040.02.c. are met. (40 CFR 144.12) ( )

d. For Class II wells, if any water quality monitoring of an underground source of drinking water indicates the movement of any contaminant into the underground source of drinking water, or degradation of the ground water quality is detected and deemed significant by the Department, except as authorized under these rules, the Director shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting (including closure of the injection well) as are necessary to prevent such movement. In the case of wells authorized by permit, these additional requirements shall be imposed by modifying the permit in accordance with Subsection 057.02, or the permit may be terminated under Subsection 057.03 if cause exists, or appropriate enforcement action may be taken if the permit has been violated. (40 CFR 144.12) ( )

e. Notwithstanding any other provision of this section, the Director may take emergency action upon receipt of information that a contaminant which is present in or likely to enter a public water system or underground source of drinking water may present an imminent and substantial endangerment to the health of persons. (40 CFR 144.12) ( )

f. Construction of large capacity cesspools, motor vehicle waste disposal wells, radioactive waste disposal wells, and untreated sewage disposal wells is prohibited. Construction and use of other Class V shallow injection wells are authorized by these rules without permit provided that: ( )

i. Required inventory information is submitted to the Director pursuant to Subsection 070.01 of this rule. ( )

ii. Use of the shallow injection well shall not result in unreasonable contamination of a USDW or cause a violation of surface or ground water quality standards that would affect a beneficial use. ( )

**g.** Class IV injection wells used to inject contaminated ground water that has been treated and is being reinjected into the same formation from which it was drawn are not prohibited by these rules if such injection is approved by EPA, or a State, pursuant to provisions for cleanup of releases under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601–9657, or pursuant to requirements and provisions under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 through 6987. ( )

**h.** All large capacity cesspools must be properly decommissioned by January 1, 2005. A cease and desist order may be issued to the owner or the operator when a large capacity cesspool is found to be a threat to the ground water resources as described in Paragraph 070.01.c. ( )

**i.** All motor vehicle waste disposal wells must be properly decommissioned by January 1, 2005. A cease and desist order may be issued to the owner or the operator when a motor vehicle waste disposal well is found to be a threat to the ground water resources as described in Paragraph 070.01.c. ( )

**j.** The Construction, operation or maintenance of any non-experimental Class V geologic sequestration well is prohibited. ( )

**03. Exemptions. ( )**

**a.** The UIC inventory and fee requirements of these rules do not apply to individual subsurface sewage disposal system wells. These systems are, however, subject to the permitting and fee requirements of IDAPA 58.01.03 “Individual/Subsurface Sewage Disposal Rules,” Title 39, Chapter 1 and Title 39, Chapter 36, Idaho Code. ( )

**b.** State or local government entities are exempt from the permit requirements of these rules for wells associated with highway and street construction and maintenance projects, but shall submit shallow injection well inventory information for said wells and shall comply with all other requirements of these rules. ( )

**c.** Mine tailings backfill (5X13) wells are authorized by rule as part of mining operations. They are therefore exempt from the ground water quality standards and permitting requirements of these rules provided that their use is limited to the injection of mine tailings only. The use of any 5X13 well(s) shall not result in water quality standards at points of diversion for beneficial use being exceeded or otherwise affect a beneficial use. Should water quality standards be exceeded or beneficial uses be affected, the Director may order the wells to be put under the permit requirements of these rules, or the wells may be required to be remediated or closed. As a condition of their use, the Director may require the construction and sampling of monitoring wells by the owner/operator. 5X13 wells are subject to the inventory requirements of Subsection 070.01. ( )

**041. -- 044. (RESERVED)**

**045. CLASS II: APPLICATION INFORMATION.**

**01. Application For A Permit. (40 CFR 124.3) ( )**

**a. Application. ( )**

**i.** Any person who requires a permit shall complete, sign, and submit to the Director an application for each permit required under this section. ( )

**ii.** The Director shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit found in Subsection 045.02 of these rules and the signature and certification requirements found in Subsection 045.03 of these rules. ( )

**b.** The Director shall review for administrative completeness every application for permit to operate an injection well. The Director shall notify the applicant whether the application is administratively complete within ten (10) business days of its receipt. If the application is administratively incomplete, the Director shall list the information necessary to make the application administratively complete and submit this with the notification. The purpose of this review is to determine if the applicant has submitted all of the appropriate forms and information



necessary to perform a review for completeness in section 045.01.c. There will be no technical analysis of the details contained in the permit application as part of this review. ( )

c. The Director shall review for completeness every application for permit. Each application for permit submitted for a new UIC injection well should be reviewed for completeness by the Director within 60 days of its receipt. Each application for permit submitted for an existing injection well should be reviewed for completeness within 60 days of receipt. Upon completing the review, the Director shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Director shall list the information necessary to make the application complete. When the application is for an existing UIC injection well the Director shall specify in the notice of deficiency a date for submitting the necessary information. The Director shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the Director may request additional information from an applicant but only when necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete. ( )

d. If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under the applicable statutory provision IDWR housekeeping as determined by the Director. ( )

e. If the Director decides that a site visit is necessary for any reason in conjunction with the processing of an application, he or she shall notify the applicant and a date shall be scheduled. ( )

f. The effective date of an application is the date on which the Director notifies the applicant that the application is complete as provided in Paragraph 045.01.c. of this rule. ( )

g. For each application for a new UIC injection well the Director shall, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule shall specify target dates by which the Director intends to: ( )

i. Prepare a draft permit; ( )

ii. Give public notice; ( )

iii. Complete the public comment period, including any public hearing; and ( )

iv. Issue a final permit. ( )

**02. Application For A Permit; Authorization By Permit. (40 CFR 144.31)** ( )

a. Permit application. All injection activities including construction of an injection well are prohibited until the owner or operator is authorized by permit. Procedures for applications, issuance and administration of emergency permits are found exclusively in Subsection 045.09. ( )

b. When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit. ( )

c. Time to apply. Any person who performs or proposes an underground injection for which a permit is or will be required shall submit an application to the Director in accordance with the UIC program. For new injection wells, a reasonable time before construction is expected to begin. ( )

d. Completeness. The Director shall not issue a permit before receiving a complete application for a permit except for emergency permits. An application for a permit is complete when the Director receives an application form with all of the information requirements listed in Paragraph 045.02.e., and Subsections 045.03 through 045.08, and Subsection 045.10 and any supplemental information which are completed to his satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity. ( )

e. Information requirements. All applicants for Class II permits shall provide the following information to the Director, using the application form provided by the Director. ( )

i. Name, mailing address, and location of the facility for which the application is submitted. ( )

ii. Permit processing fee. ( )

iii. Up to four (4) SIC codes which best reflect the principal products or services provided by the facility. ( )

iv. The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity. ( )

v. Whether the facility is located on Indian lands. ( )

vi. Documentation that the applicant has the right to conduct operations at the proposed site. ( )

vii. A topographic map (or other map if a topographic map is unavailable) extending one (1) mile beyond the property boundaries of the source depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, and other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within a quarter mile of the facility property boundary, or within the area of review, whichever is greater. ( )

viii. A brief description of the nature of the injection activity. ( )

ix. The applicant shall identify and submit on a list with the permit application the names and addresses of all owners of record of land within one-quarter (1/4) mile of the facility boundary. The applicant shall also submit an affidavit certifying that all owners of record of land within one-quarter (1/4) mile of the facility boundary have been notified in writing of the proposed injection well. A copy of this notice shall be submitted with the affidavit. This requirement may be waived by the Director where the site is located in a populous area and the Director determines that the requirement would be impracticable. ( )

x. A determination of the regional ground water flow direction and gradient in the USDW(s) above the injection zone. ( )

xi. A plugging and abandonment plan that meets the requirements of Subsection 054.03 of these rules and is acceptable to the Director. ( )

e. Recordkeeping. Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under Subsection 045.02 for a period of at least three (3) years from the date the application is signed. ( )

**03. Signatories to Permit Applications and Reports. (40 CFR 144.32) ( )**

a. Applications. All permit applications, except those submitted for Class II wells (see Paragraph 045.03.b. of this rule), shall be signed as follows: ( )

i. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: ( )

(1) A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision making functions for the corporation, or ( )

(2) The manager of one (1) or more manufacturing, production, or operating facilities employing more than two hundred fifty (250) persons or having gross annual sales or expenditures exceeding twenty-five (\$25) ( )

million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. ( )

Note: The Department does not require specific assignments or delegations of authority to responsible corporate officers identified in Subparagraph 045.03.a.i.(1). The Agency will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the Director to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions under Subparagraph 045.03.a.i.(2) rather than to specific individuals. ( )

ii. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or ( )

iii. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: ( )

(1) The chief executive officer of the agency, or ( )

(2) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency. ( )

**b.** Reports. All reports required by permits, other information requested by the Director, and all permit applications submitted for Class II wells under Subsection 045.02 shall be signed by a person described in Paragraph 045.03.a. of this rule, or by a duly authorized representative of that person. A person is a duly authorized representative only if: ( )

i. The authorization is made in writing by a person described in Paragraph 045.03.a. of this rule: ( )

ii. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and ( )

iii. The written authorization is submitted to the Director. ( )

**c.** Changes to authorization. If an authorization under Paragraph 045.03.b. of this rule is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Paragraph 045.03.b. of this rule must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative. ( )

**d.** Certification. Any person signing a document under Paragraph 045.03.a. or 045.03.b. of this rule shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. ( )

**04. Bonding.** ( )

**a.** Individual Bond. The Director shall require, as a condition of every Class II injection well permit, that every person who engages in the construction, alteration, testing, or operation of a well provide evidence of good and sufficient security in the form of a bond, letter of credit, or other surety acceptable to the Director that ensures

that the applicant perform the duties required by this chapter and properly abandon any well covered by such permit. Good and sufficient security for each injection well shall be an amount of ten thousand dollars (\$10,000) plus one dollar (\$1) per foot of depth. The bond shall be conditioned upon the performance of the owner's or operator's duty to comply with the rules of the Water Resource Board, with respect to the drilling, maintaining, operating, and plugging of each well. Said bond shall remain in force and effect until the plugging and abandonment of said well is approved by the Director and the well site is reclaimed as described in Section 325 of IDAPA 20.07.02 "Conservation of Crude Oil and natural Gas in the State of Idaho", or the bond is released by the Department. The Director may impose additional bonding on an owner or operator given sufficient reason, such as non-compliance, unusual conditions, or other circumstances that suggest a particular well has potential risk or liability in excess of that normally expected. ( )

**05. Information to Be Considered By The Director.** (40 CFR 146.24) ( )

a. This section sets forth the information which must be considered by the Director in authorizing Class II wells. Certain maps, cross-sections, tabulations of wells within the area of review, and other data may be included in the application by reference provided they are current, readily available to the Director (for example, in the permitting agency's files) and sufficiently identified to be retrieved. All the information in this section is to be submitted to the Director ( )

i. Prior to the issuance of a permit for the construction or conversion of a new Class II well the applicant shall submit the following: ( )

ii. Information required in Subsection 045.02; ( )

iii. A map showing the injection well or project area for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number or name and location of all existing producing wells, injection wells, decommissioned wells, dry holes, and water wells. The map must also show surface bodies of waters, mines (surface and subsurface), quarries and other pertinent surface features including residences and roads, and faults if known or suspected. Only information of public record and pertinent information known to the applicant is required to be included on this map. This requirement does not apply to existing Class II wells. This requirement does not apply to permit renewals; and ( )

iv. A tabulation of data reasonably available from public records or otherwise known to the applicant on all wells within the area of review included on the map required under Subparagraph 045.05.a.ii. of this rule which penetrate the proposed injection zone or, in the case of Class II wells operating over the fracture pressure of the injection formation, all known wells within the area of review which penetrate formations affected by the increase in pressure. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and complete, and any additional information the Director may require. In cases where the information would be repetitive and the wells are of similar age, type, and construction the Director may elect to only require data on a representative number of wells. ( )

(1) Proposed operating data; ( )

(2) Average and maximum daily rate and volume of fluids to be injected. ( )

(3) Average and maximum injection pressure; and ( )

v. Source and an appropriate analysis of the chemical and physical characteristics of the injection fluid. ( )

vi. Appropriate geological data on the injection zone and confining zone including lithologic description, geological name, thickness and depth; ( )

vii. Geologic name and depth to bottom of all underground sources of drinking water which may be affected by the injection; ( )

viii. Schematic or other appropriate drawings of the surface and subsurface construction details of the

well to show compliance with section 045.06 of these rules: ( )

ix. In the case of new injection wells the corrective action proposed to be taken by the applicant under the National Pollutant Discharge Elimination System in Title 40 Code of Federal Regulations 122.44: ( )

x. A certificate that the applicant has assured through a performance bond or other appropriate means, the resources necessary to close plug or abandon the well: ( )

xi. Proposed formation testing program to obtain the information required by Paragraph 045.06.g, unless such information is already available: ( )

xii. Proposed stimulation program: ( )

xiii. Proposed injection procedure: ( )

xiv. Proposed contingency plans, if any, to cope with well failures so as to prevent migration of contaminating fluids into an underground source of drinking water: ( )

xv. Plans for meeting the monitoring requirements of Paragraph 054.01.b. ( )

**b.** Prior to operating a Class II well the owner/operator must submit the following information:( ( )

i. All available logging and testing program data on the well; ( )

ii. A demonstration of mechanical integrity pursuant to Subsection 054.02; ( )

iii. The anticipated maximum pressure and flow rate at which the permittee will operate. ( )

iv. The information specified in Paragraph 045.06.g. of these rules; ( )

v. The actual injection procedure; and ( )

vi. For new wells the status of corrective action on defective wells in the area of review. ( )

**c.** Prior to the plugging and abandonment of a Class II well the owner/operator must provide the following information: ( )

i. The type, and number of plugs to be used; ( )

ii. The placement of each plug including the elevation of top and bottom; ( )

iii. The type, grade, and quantity of cement to be used; ( )

iv. The method of placement of the plugs; and ( )

**06. Construction Requirements. (40 CFR 146.22)** ( )

**a.** All new Class II wells shall be sited in such a fashion that they inject into a formation which is separated from any USDW by a confining zone that is free of known open faults or fractures within the area of review. ( )

**b. Requirements.** ( )

i. All Class II injection wells shall be cased and cemented to prevent movement of fluids into or between underground sources of drinking water. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered: ( )

- (1) Depth to the injection zone; ( )
- (2) Depth to the bottom of all USDWs; and ( )
- (3) Estimated maximum and average injection pressures; ( )
- ii. In addition the Director may consider information on: ( )
  - (1) Nature of formation fluids; ( )
  - (2) Lithology of injection and confining zones; ( )
  - (3) External pressure, internal pressure, and axial loading; ( )
  - (4) Hole size; ( )
  - (5) Size and grade of all casing strings; and ( )
  - (6) Class of cement. ( )
- c. The requirements in Paragraph 045.06.b. of this rule need not apply to existing or newly converted Class II wells located in existing fields if: ( )
  - i. Regulatory controls for casing and cementing existed for those wells at the time of drilling and those wells are in compliance with those controls; and ( )
  - ii. Well injection will not result in the movement of fluids into an underground source of drinking water so as to create a significant risk to the health of persons. ( )
- d. Appropriate logs and other tests shall be conducted during the drilling and construction of new Class II wells. A descriptive report interpreting the results of that portion of those logs and tests which specifically relate to (1) an USDW and the confining zone adjacent to it, and (2) the injection and adjacent formations shall be prepared by a knowledgeable log analyst and submitted to the director. At a minimum, these logs and tests shall include: ( )
  - i. Deviation checks on all holes constructed by first drilling a pilot hole and then enlarging the pilot hole, by reaming or another method. Such checks shall be at sufficiently frequent intervals to assure that vertical avenues for fluid movement in the form of diverging holes are not created during drilling. ( )
  - ii. Such other logs and tests as may be needed after taking into account the availability of similar data in the area of the drilling site, the construction plan, and the need for additional information that may arise from time to time as the construction of the well progresses. In determining which logs and tests shall be required the following shall be considered by the Director in setting logging and testing requirements: ( )
    - (1) For surface casing intended to protect underground sources of drinking water in areas where the lithology has not been determined: ( )
      - (a) Electric and caliper logs before casing is installed; and ( )
      - (b) A cement bond, temperature, or density log after the casing is set and cemented. ( )
    - (2) For intermediate and long strings of casing intended to facilitate injection: ( )
      - (a) Electric porosity and gamma ray logs before the casing is installed; ( )
      - (b) Fracture finder logs; and ( )

(c) A cement bond, temperature, or density log after the casing is set and cemented. ( )

e. At a minimum, the following information concerning the injection formation shall be determined or calculated for new Class II wells or projects: ( )

i. Fluid pressure: ( )

ii. Estimated fracture pressure: ( )

iii. Physical and chemical characteristics of the injection zone. ( )

07. Area of Review. (40 CFR 146.6) The area of review for each injection well or each field, project or area of the State shall be determined according to either Paragraph 045.07.a. or 045.07.b. of this rule. The Director may solicit input from the owners or operators of injection wells within the State as to which method is most appropriate for each geographic area or field. ( )

a. Zone of endangering influence. ( )

i. The zone of endangering influence shall be: ( )

(1) That area the radius of which is the lateral distance in which the pressures in the injection zone may cause the migration of the injection and/or formation fluid into an underground source of drinking water. ( )

ii. Computation of the zone of endangering influence may be based upon the parameters listed below and should be calculated for an injection time period equal to the expected life of the injection well or pattern. The following modified equation illustrates one form which the mathematical model may take. ( )

$$r \equiv [(2.25KHt) / (S10^3)]^{0.5}$$

where:

$$x \equiv (4\pi KH)(h_w - h_{bo} * S_p G_p) / (2.3Q)$$

$\equiv$

r  $\equiv$  Radius of endangering influence from injection well (length)

K  $\equiv$  Hydraulic conductivity of the injection zone (length/time)

H  $\equiv$  Thickness of the injection zone (length)

T  $\equiv$  Time of injection (time)

S  $\equiv$  Storage coefficient (dimensionless)

Q  $\equiv$  Injection rate (volume/time)

$h_{bo}$   $\equiv$  Observed original hydrostatic head of injection zone (length) measured from the base of the lowermost underground source of drinking water

$h_w$   $\equiv$  Hydrostatic head of underground source of drinking water (length) measured from the base of the lowest underground source of drinking water

$S_p G_p$   $\equiv$  Specific gravity of fluid in the injection zone (dimensionless)

$\pi$   $\equiv$  3.142 (dimensionless)

The above equation is based on the following assumptions:

- (1)The injection zone is homogenous and isotropic;
- (2)The injection zone has infinite area extent;
- (3)The injection well penetrates the entire thickness of the injection zone;
- (4)The well diameter is infinitesimal compared to “r” when injection time is longer than a few minutes; and
- (5)The emplacement of fluid into the injection zone creates instantaneous increase in pressure.

**b.** Fixed radius. ( )

**i.** A fixed radius around the well of not less than one-fourth (1/4) mile may be used. ( )

**ii.** In determining the fixed radius, the following factors shall be taken into consideration: Chemistry of injected and formation fluids; hydrogeology; population and ground-water use and dependence; and historical practices in the area. ( )

**c.** If the area of review is determined by a mathematical model pursuant to Paragraph 045.07.a. of this rule, the permissible radius is the result of such calculation even if it is less than one-fourth (1/4) mile. In these instances, the Director has the discretion to review the area of review analysis and impose the fixed radius method if the model results yield a small radius that is unrealistic. ( )

**08.** Corrective Action. (40 CFR 144.55, 146.7) ( )

**a.** Coverage. Applicants for Class II injection well permits shall identify the location of all known wells within the injection well's area of review which penetrate the injection zone, or in the case of Class II wells operating over the fracture pressure of the injection formation, all known wells within the area of review penetrating formations affected by the increase in pressure. For such wells which are improperly sealed, completed, or decommissioned, the applicant shall also submit a plan consisting of such steps or modifications as are necessary to prevent movement of fluid into underground sources of drinking water (“corrective action”). Where the plan is adequate, the Director shall incorporate it into the permit as a condition. Where the Director's review of an application indicates that the permittee's plan is inadequate (based on the factors in Paragraph 045.07.c. of this rule), the Director shall require the applicant to revise the plan, prescribe a plan for corrective action as a condition of the permit under Paragraph 045.08.b. of this rule, or deny the application. ( )

**b.** Requirements. ( )

**i.** New injection wells. No owner or operator of a new injection well may begin injection until all required corrective action has been taken. ( )

**ii.** Injection pressure limitation. The Director may require as a permit condition that injection pressure be so limited that pressure in the injection zone does not exceed hydrostatic pressure at the site of any improperly completed or decommissioned well within the area of review. This pressure limitation shall satisfy the corrective action requirement. Alternatively, such injection pressure limitation can be part of a compliance schedule and last until all other required corrective action has been taken. ( )

**c.** In determining the adequacy of corrective action proposed by the applicant and in determining the additional steps needed to prevent fluid movement into underground sources of drinking water, the following criteria and factors shall be considered by the Director: ( )

**i.** Nature and volume of injected fluid; ( )

**ii.** Nature of native fluids or by-products of injection; ( )

**iii.** Potentially affected population; ( )



- iv. Geology; ( )
- v. Hydrology; ( )
- vi. History of the injection operation; ( )
- vii. Completion and plugging records; ( )
- viii. decommissioning procedures in effect at the time the well was decommissioned; and ( )
- ix. Hydraulic connections with underground sources of drinking water. ( )
- 09. Emergency Permits. (40 CFR 144.34)** ( )
- a. Coverage. Notwithstanding any other provision of this section, the Director may temporarily permit a specific underground injection if:** ( )
- i. An imminent and substantial endangerment to the health of persons will result unless a temporary emergency permit is granted; or ( )
  - ii. A substantial and irretrievable loss of oil or gas resources will occur unless a temporary emergency permit is granted to a Class II well; and ( )
  - (1) Timely application for a permit could not practicably have been made; and ( )
    - (2) The injection will not result in the movement of fluids into underground sources of drinking water; ( )
- or**
- iii. A substantial delay in production of oil or gas resources will occur unless a temporary emergency permit is granted to a new Class II well and the temporary authorization will not result in the movement of fluids into an underground source of drinking water; and ( )
  - (1) Timely application for a permit could not practically have been made. ( )
- b. Requirements for issuance.** ( )
- i. Any temporary permit under Subparagraph 045.08.a.i. of this rule shall be for no longer term than required to prevent the hazard. ( )
  - ii. Any temporary permit under Subparagraph 045.08.a.ii. of this rule shall be for no longer than 90 days, except that if a permit application has been submitted prior to the expiration of the 90-day period, the Director may extend the temporary permit until final action on the application. ( )
  - iii. Any temporary permit under Subparagraph 045.08.a.iii. of this rule shall be issued only after a complete permit application has been submitted and shall be effective until final action on the application. ( )
  - iv. Notice of any temporary permit under Subsection 045.08 shall be published in accordance with Subsection 048.04 within ten (10) days of the issuance of the permit. ( )
  - v. The temporary permit under this section may be either oral or written. If oral, it must be followed within five (5) calendar days by a written temporary emergency permit. ( )
  - vi. The Director shall condition the temporary permit in any manner he or she determines is necessary to ensure that the injection will not result in the movement of fluids into an underground source of drinking water. ( )

**10. Request for Variance.** (40 CFR 144.16) ( )

**a.** When injection does not occur into, through or above an underground source of drinking water, the Director may consider a well or project with a request for variance from the requirements for area of review, ICL suggested revision operation, monitoring, and reporting than required in these rules to the extent that the reduction in requirements will not result in an increased risk of movement of fluids into an underground source of drinking water. ( )

**b.** When injection occurs through or above an underground source of drinking water, but the radius of endangering influence when computed under Paragraph 045.07.a is smaller or equal to the radius of the well, the Director may authorize a well or project with less stringent requirements for operation, monitoring, and reporting than required in these rules to the extent that the reduction in requirements will not result in an increased risk of movement of fluids into an underground source of drinking water. ( )

**c.** When reducing requirements under Paragraph 045.09.a. or 045.09.b. of this rule, the Director shall prepare a fact sheet under Subsection 048.02 explaining the reasons for the action. ( )

**11. Contingency Plan.** The applicant shall submit a contingency plan(s) which describes how the fluids, that were intended to be injected, will be disposed of in the case that this injection well being applied for is unusable for injection under these rules at some point during its operating life. ( )

**046. -- 047. (RESERVED)**

**048. CLASS II: APPLICATION PROCESSING.**

**01. Draft Permits.** (40 CFR 124.6) ( )

**a.** Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application. ( )

**b.** If the Director tentatively decides to deny the permit application, he or she shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this section. See Paragraph 048.03.e. The applicant may request to meet with the Director, or a designated representative, to review application deficiencies and be given the opportunity to correct the deficiencies prior to initiating the public notice found in Subsection 048.04. If the Director's final decision (Subsection 048.07) is that the tentative decision to deny the permit application was incorrect, he or she shall withdraw the notice of intent to deny and proceed to prepare a draft permit under Paragraph 048.01.d. of this rule. ( )

**c.** If the Director decides to prepare a draft permit, he or she shall prepare a draft permit that contains the following information: ( )

**i.** All conditions under Subsection 051.01; ( )

**ii.** All compliance schedules under Subsection 051.03; ( )

**iii.** All monitoring requirements under Subsection 051.04; and ( )

**iv.** Permit conditions under Subsection 051.02; ( )

**c.** All draft permits prepared under this section shall be accompanied by a fact sheet (Subsection 048.02), and shall be based on the administrative record (Subsection 048.03), publicly noticed (Subsection 048.04) and made available for public comment (Subsection 048.05). The Director shall give notice of opportunity for a public hearing (Subsection 048.05), issue a final decision (Subsection 048.07) and respond to comments (Subsection 048.08). ( )

**02. Fact Sheet.** (40 CFR 124.8) ( )

- a.** A fact sheet shall be prepared for every draft permit. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other person. ( )
- b.** The fact sheet shall include, when applicable: ( )
- i.** A brief description of the type of facility or activity which is the subject of the draft permit; ( )
- ii.** The type and quantity of wastes, fluids, or pollutants which are proposed to be injected. ( )
- iii.** A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record; ( )
- iv.** Reasons why any requested variances or alternatives to required standards do or do not appear justified; ( )
- v.** A description of the procedures for reaching a final decision on the draft permit including: ( )
- (1)** The beginning and ending dates of the comment period under Subsection 048.04 and the address where comments will be received; ( )
- (2)** Procedures for requesting a hearing and the nature of that hearing; and ( )
- (3)** Any other procedures by which the public may participate in the final decision. ( )
- vi.** Name and telephone number of a person to contact for additional information. ( )
- 03. Administrative Record for Draft Permits. (40 CFR 124.9)** ( )
- a.** The provisions of a draft permit prepared under Subsection 048.01 shall be based on the administrative record defined in Section 048. ( )
- b.** For preparing a draft permit under Subsection 048.01, the record shall consist of: ( )
- i.** The application, if required, and any supporting data furnished by the applicant; ( )
- ii.** The draft permit or notice of intent to deny the application or to terminate the permit; ( )
- iii.** A fact sheet (Subsection 048.02); ( )
- iv.** All documents cited in the statement of basis or fact sheet; and ( )
- v.** Other documents contained in the supporting file for the draft permit. ( )
- c.** Material readily available at the Department or published material that is generally available, and that is included in the administrative record under Paragraphs 048.03.b. and 048.03.c. of this rule, need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or the fact sheet. ( )
- d.** This section applies to all draft permits when public notice was given after the effective date of these rules. ( )
- 04. Public Notice of Permit Actions and Public Comment Period. (40 CFR 124.10)** ( )
- a.** Scope. ( )

- i. The Director shall give public notice that the following actions have occurred: ( )
  - (1) A permit application has been tentatively denied under Paragraph 048.01.b.; ( )
  - (2) A draft permit has been prepared under Paragraph 048.01.d.; ( )
  - (3) A hearing has been scheduled under Subsection 048.06; or ( )
  - (4) An appeal has been granted in accordance with the requirements of the statutes listed in Section 003 of these rules. ( )
- ii. No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under Paragraph 057.01.b. Written notice of that denial shall be given to the requester and to the permittee. ( )
- iii. Public notices may describe more than one (1) permit or permit actions. ( )
- b. Timing. ( )
  - i. Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under Paragraph 048.04.a. of this rule shall allow at least thirty (30) days for public comment. Commenters may request additional time to comply with the requirements of Subsection 060.01 and must demonstrate the need for such time. ( )
  - ii. Public notice of a public hearing shall be given at least thirty (30) days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two (2) notices may be combined.) ( )
- c. Methods. Public notice of activities described in Subparagraph 048.04.a.i. of this rule shall be given by the following methods: ( )
  - i. By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under Paragraph 048.04.c. may waive his or her rights to receive notice for any classes and categories of permits): ( )
    - (1) The applicant; ( )
    - (2) Any other agency which the Director knows has issued or is required to issue a permit for the same facility or activity; ( )
    - (3) Persons on a mailing list developed by: ( )
      - (a) Including those who request in writing to be on the list; ( )
      - (b) Soliciting persons for "area lists" from participants in past permit proceedings in that area; and ( )
    - (c) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as Regional and State funded newsletters, environmental bulletins, or State law journals. ( )
  - (4) Other Agencies; ( )
    - (a) To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and ( )
    - (b) To each State agency having any authority under State law with respect to the construction or ( )

operation of such facility. ( )

(5) Owners or operators of oil or gas wells that are in the same reservoir or field as the proposed well. ( )

ii. By placing a legal notice in a newspaper of general circulation in the county in which the well is located; and ( )

iii. Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or legal notice in a newspaper of general circulation in the county in which the well is located, or any other forum or medium to elicit public participation. ( )

d. Contents: ( )

i. All public notices. All public notices issued under this part shall contain the following minimum information: ( )

(1) Name and address of the office processing the permit action for which notice is being given;( )

(2) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit; ( )

(3) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit; ( )

(4) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, as the case may be, statement of basis or fact sheet, and the application; and ( )

(5) A brief description of the comment procedures required by Subsections 048.05 and 048.06 and the time and place of any hearing that will be held, including a statement of procedures to request a hearing and other procedures by which the public may participate in the final permit decision. ( )

(6) The location of the administrative record required by Subsection 048.03, the times at which the record will be open for public inspection, and a statement that all data submitted by the applicant is available as part of the administrative record. ( )

(7) Any additional information considered necessary or proper. ( )

ii. Public notices for hearings. In addition to the general public notice described in Subparagraph 048.04.d.i. of this rule, the public notice of a hearing under Subsection 048.06 shall contain the following information: ( )

(1) Reference to the date of previous public notices relating to the permit; ( )

(2) Date, time, and place of the hearing; ( )

(3) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures. ( )

e. In addition to the general public notice described in Subparagraph 048.04.d.i. of this rule, all persons identified in Subparagraphs 048.04.c.i.(1), 048.04.c.i.(2), 048.04.c.i.(3), and 048.04.c.i.(4) of this rule shall be mailed a copy of the fact sheet or statement of basis, the permit application and the draft permit. ( )

**05. Public Comments and Requests For Public Hearings.** (40 CFR 124.11) During the public comment period provided under Subsection 048.04, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing

shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in Subsection 048.08. ( )

**06. Public Hearings.** (40 CFR 124.12) ( )

**a.** Basis and notice. The Director may conduct a fact finding hearing or investigative hearing in accordance with section 42-3907, Idaho Code. ( )

**i.** The Director shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit(s); ( )

**ii.** The Director may also hold a public hearing at his or her discretion, whenever, for instance, such a hearing might clarify one (1) or more issues involved in the permit decision; ( )

**iii.** Public notice of the hearing shall be given as specified in Subsection 048.04. ( )

**b.** Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under Subsection 048.04 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing. ( )

**07. Issuance and Effective Date Of Permit.** (40 CFR 124.15) ( )

**a.** After the close of the public comment period under Subsection 048.04 on a draft permit, the Director shall issue a final permit decision. The Director shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision. For the purposes of this section, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit. ( )

**b.** A final permit decision shall become effective immediately after the service of notice of the decision unless: ( )

**i.** A later effective date is specified in the decision; or ( )

**ii.** An Administrative Appeal is initiated in accordance with Section 003 of these rules. ( )

**08. Response to Comments.** (40 CFR 124.17) ( )

**a.** At the time that any final permit decision is issued under Subsection 048.07, the Director shall issue a response to comments. This response shall: ( )

**i.** Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and ( )

**ii.** Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing. ( )

**b.** Any documents cited in the response to comments shall be included in the administrative record for the final permit decision as defined in Subsection 048.09. If new points are raised or new material supplied during the public comment period, the Department may document its response to those matters by adding new materials to the administrative record. ( )

**09. Administrative Record for Final Permit.** (40 CFR 124.18) ( )

**a.** The Director shall base final permit decisions under Subsection 048.07 on the administrative record defined in this section. ( )

**b.** The administrative record for any final permit shall consist of the administrative record for the draft permit and: ( )

**i.** All comments received during the public comment period provided under Subsection 048.04: ( )

**ii.** Any written materials submitted at such a hearing: ( )

**iii.** The response to comments required by Subsection 048.08 and any new material placed in the record under that section: ( )

**iv.** Other documents contained in the supporting file for the permit; and ( )

**v.** The final permit. ( )

**c.** The additional documents required under Paragraph 048.04.b. of this rule should be added to the record as soon as possible after their receipt or publication by the Agency. The record shall be complete on the date the final permit is issued. ( )

**d.** This section applies to permits when the draft permit was subject to the administrative record requirements of Subsection 048.03. ( )

**e.** Material readily available at the Department, or published materials which are generally available and which are included in the administrative record under the standards of this section or of Subsection 048.08 ("Response to comments"), need not be physically included in the same file as the rest of the record as long as it is specifically referred to in the statement of basis or fact sheet or in the response to comments. ( )

**10.** **Duration of Permits.** (40 CFR 144.36) ( )

**a.** UIC permits for Class II wells shall be issued for a period up to the operating life of the facility. The Director shall review each issued Class II well UIC permit at least once every five (5) years to determine whether it should be modified, revoked and reissued, terminated or a minor modification made as provided in Subsection 057.02, 057.03, or 057.04. ( )

**b.** Except as provided in Subsection 057.05, the term of a permit shall not be extended by modification beyond the maximum duration specified in this section. ( )

**c.** The Director may issue any permit for a duration that is less than the full allowable term under this section and the reason(s) for this determination will be added to the back file for this facility. ( )

**049. -- 050.** **(RESERVED)**

**051.** **CLASS II: PERMIT CONDITIONS.**

**01.** **Conditions Applicable to All Permits.** (40 CFR 144.51) The following conditions apply to all UIC permits. All conditions applicable to all permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations must be given in the permit. ( )

**a.** Duty to comply. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of these rules and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application; except that the permittee need not comply with the provisions of this permit to the extent and for the duration such noncompliance is authorized in an emergency permit under Subsection 045.09. ( )

**b.** Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. ( )

c. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. ( )

d. Duty to mitigate. The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit. ( )

e. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit. ( )

f. Permit actions. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition. ( )

g. Property rights. This permit does not convey any property rights of any sort, or any exclusive privilege. ( )

h. Duty to provide information. The permittee shall furnish to the Director, within a time specified, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit. ( )

i. Inspection and entry. The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to: ( )

i. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit; ( )

ii. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit; ( )

iii. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and ( )

iv. Sample or monitor at reasonable times, for the purposes of assuring permit compliance, any substances or parameters at any location. ( )

i. Monitoring and records. ( )

i. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. ( )

ii. The permittee shall retain records of all monitoring information, including the following: ( )

(1) Calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the Director at any time; and ( )

(2) The nature and composition of all injected fluids until three (3) years after the completion of any plugging and abandonment procedures specified under Subparagraph 051.02.a.vi. The Director may require the



owner or operator to deliver the records to the Director at the conclusion of the retention period. The owner or operator shall continue to retain the records after the three (3) year retention period unless he delivers the records to the Director or obtains written approval from the Director to discard the records. ( )

iii. Records of monitoring information shall include: ( )

(1). The date, exact place, and time of sampling or measurements: ( )

(2) The individual(s) who performed the sampling or measurements: ( )

(3) The date(s) analyses were performed: ( )

(4) The individual(s) who performed the analyses: ( )

(5) The analytical techniques or methods used; and ( )

(6) The results of such analyses. ( )

k. Signatory requirement. All applications, reports, or information submitted to the Director shall be signed and certified. (See Subsection 045.03) ( )

l. Reporting requirements: ( )

i. Planned changes. The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. ( )

ii. Anticipated noncompliance. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. ( )

iii. Transfers. This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary. (See Subsection 057.06; in some cases, modification or revocation and reissuance is mandatory.) ( )

iv. Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit. ( )

v. Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 30 days following each schedule date. ( )

vi. Twenty-four (24) hour reporting. The permittee shall report any noncompliance which may endanger health or the environment, including: ( )

(1) Any monitoring or other information which indicates that any contaminant may cause an endangerment to a USDW; or ( )

(2) Any noncompliance with a permit condition or malfunction of the injection system which may cause fluid migration into or between USDWs. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. ( )

vii. Other noncompliance. The permittee shall report all instances of noncompliance not reported under Subparagraphs 049.01.l.i, 049.01.l.iv., 049.01.l.v., and 049.01.l.vi. of this rule, at the time monitoring reports are

submitted. The reports shall contain the information listed in Subparagraph 049.01.l.vi. of this rule. ( )

viii. Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information. ( )

m. Requirements prior to commencing injection. A new injection well may not commence injection until construction is complete, and ( )

i. The permittee has submitted notice of completion of construction to the Director; and ( )

ii. Review. ( )

(1) The Director has inspected or otherwise reviewed the new injection well and finds it is in compliance with the conditions of the permit; or ( )

(2) The permittee has not received notice from the Director of his or her intent to inspect or otherwise review the new injection well within thirteen (13) days of the date of the notice in Subparagraph 049.01.m.i. of this rule, in which case prior inspection or review is waived and the permittee may commence injection. The Director shall include in his notice a reasonable time period in which he shall inspect the well. ( )

n. The permittee shall notify the Director at such times as the permit requires before conversion or decommissioning the well. ( )

o. A Class II permit shall include conditions which meet the applicable requirements of Subsection 054.03 to ensure that plugging and abandonment of the well will not allow the movement of fluids into or between USDWs. Where the plan meets the requirements of Subsection 054.03, the Director shall incorporate the plan into the permit as a permit condition. Where the Director's review of an application indicates that the permittee's plan is inadequate, the Director may require the applicant to revise the plan, prescribe conditions meeting the requirements of Paragraph 049.01.o., or deny the permit. For purposes of this paragraph, temporary or intermittent cessation of injection operations is not decommissioning. ( )

p. Plugging and abandonment report. Within 60 days after plugging a well or at the time of the next quarterly report (whichever is less) the owner or operator shall submit a report to the Director. If the quarterly report is due less than fifteen (15) days before completion of plugging, then the report shall be submitted within 60 days. The report shall be certified as accurate by the person who performed the plugging operation. Such report shall consist of either: ( )

i. A statement that the well was plugged in accordance with the plan previously submitted to the Director; or ( )

ii. Where actual plugging differed from the plan previously submitted, an updated version of the plan on the form supplied by the Director, specifying the differences. ( )

q. Duty to establish and maintain mechanical integrity. ( )

i. The owner or operator of a Class II well permitted under this part shall establish mechanical integrity prior to commencing injection or on a schedule determined by the Director. Thereafter the owner or operator of Class II wells must maintain mechanical integrity as defined in Subsection 054.02. The Director may require by written notice that the owner or operator comply with a schedule describing when mechanical integrity demonstrations shall be made. The frequency for establishing mechanical integrity shall be at least once every five (5) years during the life of the injection well. ( )

ii. When the Director determines that a Class II well lacks mechanical integrity pursuant to Subsection 054.02 he/she shall give written notice of his/her determination to the owner or operator. Unless the Director requires immediate cessation, the owner or operator shall cease injection into the well within 48 hours of receipt of the Director's determination. The Director may allow plugging of the well pursuant to the requirements of Subsection

054.03 or require the permittee to perform such additional construction, operation, monitoring, reporting and corrective action as is necessary to prevent the movement of fluid into or between USDWs caused by the lack of mechanical integrity. The owner or operator may resume injection upon written notification from the Director that the owner or operator has demonstrated mechanical integrity pursuant to Subsection 054.02. ( )

iii. The Director may allow the owner or operator of a well which lacks mechanical integrity, as described by Paragraph 054.02.a., to continue or resume injection, if the owner or operator has made a satisfactory demonstration that there is no movement of fluid into or between USDWs. The resumption of injection under this rule can be authorized for up to one (1) year. The operator can request an additional one (1) year extension. A maximum of two (2) years is allowed under this rule. ( )

**02. Establishing Permit Conditions.** (40 CFR 144.52) ( )

a. In addition to conditions required in Subsection 051.01, the Director shall establish conditions, as required on a case-by-case basis under Subsection 048.10, and Paragraph 051.03.a., Subsection 051.04. Permits shall contain the following requirements, when applicable. ( )

i. Construction requirements as set forth in Subsection 045.06. Existing wells shall achieve compliance with such requirements according to a compliance schedule established as a permit condition. The owner or operator of a proposed new injection well shall submit plans for testing, drilling, and construction as part of the permit application. No construction may commence until a permit has been issued containing construction requirements (see Paragraph 040.02.b.). New wells shall be in compliance with these requirements prior to commencing injection operations. Changes in construction plans during construction may be approved by the Director as minor modifications (Subsection 057.04). No such changes may be physically incorporated into construction of the well prior to approval of the modification by the Director. ( )

ii. Corrective action as set forth in Subsection 045.08. ( )

iii. Operation requirements; the permit shall establish any maximum injection volumes and/or pressures necessary to assure that fractures are not initiated in the confining zone, that injected fluids do not migrate into any underground source of drinking water, that formation fluids are not displaced into any underground source of drinking water, and to assure compliance with the Subsection 054.01 operating requirements. ( )

iv. Requirements for wells managing hazardous waste. ( )

v. Monitoring and reporting requirements as set forth in Subsection 054.01. The permittee shall be required to identify types of tests and methods used to generate the monitoring data. Monitoring of the nature of injected fluids shall comply with applicable analytical methods cited and described in table I of 40 CFR 136.3 or in appendix III of 40 CFR part 261 or in certain circumstances by other methods that have been approved by the Director. ( )

vi. After a cessation of operations of two (2) years the owner or operator shall plug and abandon the well in accordance with the plan unless he: ( )

(1) Provides notice to the Director; ( )

(2) Describes actions or procedures, satisfactory to the Director, that the owner or operator will take to ensure that the well will not endanger USDWs during the period of temporary inactivity. These actions and procedures shall include compliance with the technical requirements applicable to active injection wells unless waived by the Director. ( )

vii. Financial responsibility. ( )

(1) The permittee, including the transferor of a permit, is required to demonstrate and maintain financial responsibility, as described in Subsection 045.04 of these rules, and resources to close, plug, and abandon the underground injection operation in a manner prescribed by the Director until: ( )

(a) The well has been plugged and abandoned in accordance with an approved plugging and abandonment plan pursuant to Paragraph 051.01.o. and Subsection 054.03, and submitted a plugging and abandonment report pursuant to Paragraph 051.01.p.; or ( )

(b) The well has been converted in compliance with the requirements of Paragraph 051.01.n.; or ( )

(c) The transferor of a permit has received notice from the Director that the owner or operator receiving transfer of the permit, the new permittee, has demonstrated financial responsibility for the well. ( )

(2) The permittee shall show evidence of such financial responsibility to the Director by the submission of a surety bond, or other adequate assurance, such as a financial statement or other materials acceptable to the Director as described in Subsection 045.04 of these rules. The Director may on a periodic basis require the holder of a lifetime permit to submit an estimate of the resources needed to plug and abandon the well revised to reflect inflation of such costs, and a revised demonstration of financial responsibility, if necessary. ( )

viii. Mechanical integrity. A permit for any Class II well or injection project which lacks mechanical integrity shall include a condition prohibiting injection operations until the permittee shows to the satisfaction of the Director under Subsection 054.02 that the well has mechanical integrity. ( )

ix. Additional conditions. The Director shall impose on a case-by-case basis such additional conditions as are necessary to prevent the migration of fluids into underground sources of drinking water. ( )

b. Other applicable requirements. ( )

i. In addition to conditions required in all permits the Director shall establish conditions in permits as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of these rules. ( )

ii. An applicable requirement is a statutory or regulatory requirement which takes effect prior to final administrative disposition of the permit. An applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in Subsection 057.02. ( )

iii. New or reissued permits, and to the extent allowed under Subsection 057.02 modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in Subsection 051.02. ( )

c. Incorporation. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit. ( )

**03. Schedule of Compliance.** (40 CFR 144.53) ( )

a. General. The permit may, when appropriate, specify a schedule of compliance leading to compliance with these rules ( )

i. Time for compliance. Any schedules of compliance shall require compliance as soon as possible, and in no case later than three (3) years after the effective date of the permit. ( )

ii. Interim dates. Except as provided in Subparagraph 049.03.b.i.(2) of this rule, if a permit establishes a schedule of compliance which exceeds one (1) year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement. ( )

(1) The time between interim dates shall not exceed one (1) year. ( )

(2) If the time necessary for completion of any interim requirement is more than 1 year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date. ( )

iii. Reporting. The permit shall be written to require that if Subparagraph 049.03.a.i. of this rule is applicable, progress reports be submitted no later than 30 days following each interim date and the final date of compliance. ( )

b. Alternative schedules of compliance. A permit applicant or permittee may cease conducting regulated activities (by plugging and abandonment) rather than continue to operate and meet permit requirements as follows: ( )

i. If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued: ( )

(1) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or ( )

(2) The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit. ( )

ii. If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements. ( )

iii. If the permittee is undecided whether to cease conducting regulated activities, the Director may issue or modify a permit to contain two (2) schedules as follows: ( )

(1) Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities; ( )

(2) One schedule shall lead to timely compliance with applicable requirements; ( )

(3) The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements; ( )

(4) Each permit containing two (2) schedules shall include a requirement that after the permittee has made a final decision under Subparagraph 049.03.b.iii.(1) of this rule it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities. ( )

iv. The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Director, such as a resolution of the board of directors of a corporation. ( )

**04. Requirements for Recording and Reporting of Monitoring Results.** (40 CFR 144.54) All permits shall specify: ( )

a. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate); ( )

b. Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including when appropriate, continuous monitoring; ( )

c. Applicable reporting requirements based upon the impact of the regulated activity and as specified in Paragraph 054.01.c. Reporting shall be no less frequent than specified in the above regulations. ( )

**052. -- 053. (RESERVED)**

**054. CLASS II: OPERATING REQUIREMENTS.**

- 01. Operating, Monitoring, and Reporting Requirements.** (40 CFR 146.23) ( )
- a. Operating requirements.** Operating requirements shall, at a minimum, specify that: ( )
- i. Injection pressure at the wellhead shall not exceed a maximum which shall be calculated so as to assure that the pressure during injection does not initiate new fractures or propagate existing fractures in the confining zone adjacent to the USDWs. In no case shall injection pressure cause the movement of injection or formation fluids into an underground source of drinking water. ( )
- ii. Injection between the outermost casing protecting underground sources of drinking water and the well bore shall be prohibited. ( )
- b. Monitoring requirements.** Monitoring requirements shall, at a minimum, include: ( )
- i. Monitoring of the nature of injected fluids at time intervals sufficiently frequent to yield data representative of their characteristics; ( )
- ii. Observation of injection pressure, flow rate, and cumulative volume at least with the following frequencies: ( )
- (1) Weekly for produced fluid disposal operations; ( )
- (2) Monthly for enhanced recovery operations; ( )
- (3) Daily during the injection of liquid hydrocarbons and injection for withdrawal of stored hydrocarbons; and ( )
- (4) Daily during the injection phase of cyclic steam operations. And recording of one observation of injection pressure, flow rate and cumulative volume at reasonable intervals no greater than thirty (30) days. ( )
- iii. A demonstration of mechanical integrity pursuant to Subsection 054.02 at least once every five (5) years during the life of the injection well; ( )
- iv. Maintenance of the results of all monitoring until the next permit review (see Subparagraph 051.02.a.v.); and ( )
- v. Hydrocarbon storage and enhanced recovery may be monitored on a field or project basis rather than on an individual well basis by manifold monitoring. Manifold monitoring may be used in cases of facilities consisting of more than one (1) injection well, operating with a common manifold. Separate monitoring systems for each well are not required provided the owner/operator demonstrates that manifold monitoring is comparable to individual well monitoring. ( )
- c. Reporting requirements.** ( )
- i. Reporting requirements shall at a minimum include an annual report to the Director summarizing the results of monitoring required under Paragraph 050.01.b. of this rule. Such summary shall include monthly records of injected fluids, and any major changes in characteristics or sources of injected fluid. Previously submitted information may be included by reference. ( )
- ii. Owners or operators of hydrocarbon storage and enhanced recovery projects may report on a field or project basis rather than an individual well basis where manifold monitoring is used. ( )
- 02. Mechanical Integrity.** (40 CFR 146.8) ( )
- a. An injection well has mechanical integrity if:** ( )

- i. There is no significant leak in the casing, tubing or packer; and ( )
- ii. There is no significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore. ( )
- b.** One (1) of the following methods must be used to evaluate the absence of significant leaks under Subparagraph 050.01.a.i. of this rule: ( )

  - i. Following an initial pressure test, monitoring of the tubing-casing annulus pressure with sufficient frequency to be representative, as determined by the Director, while maintaining an annulus pressure different from atmospheric pressure measured at the surface; or ( )
  - ii. Pressure test with liquid or gas: ( )

    - (1) The casing must be tested at a surface pressure of one thousand five hundred (1,500) psig or at a surface pressure of point twenty-five (0.25) psi/foot multiplied by the true vertical depth of the packer, whichever is greater, but the casing may not be subjected to a hoop stress that will exceed seventy percent (70%) of the minimum yield strength of the casing. ( )
    - (2) Criteria for a passing MIT are that the test pressure must show a stabilizing pressure trend, the test pressure may not decline more than ten percent (10%) from the actual test pressure, and the initial pressure is at or above the required test pressure. ( )
- c.** One (1) of the following methods must be used to determine the absence of significant fluid movement under Subparagraph 050.02.a.ii. of this rule: ( )

  - i. The results of a temperature or noise log, radioactive tracer survey, oxygen activation/water flow log, or equivalent log suite preapproved by the Director; or ( )
  - ii. Cementing records, cement bond log, ultrasonic imaging tool, or equivalent log preapproved by the Director, demonstrating the presence of adequate cement to prevent such migration. The Director may allow the use of a test to demonstrate mechanical integrity other than those listed in Paragraph 050.02.b. and Subparagraph 050.02.c.ii. of this rule if it will reliably demonstrate the mechanical integrity of wells for which its use is proposed. The method must have prior approval of the Director. ( )
  - iii. In conducting and evaluating the tests enumerated in this section or others to be allowed by the Director, the owner or operator and the Director shall apply methods and standards generally accepted in the industry. When the owner or operator reports the results of mechanical integrity tests to the Director, he shall include a description of the test(s) and the method(s) used. In making his/her evaluation, the Director shall review monitoring and other test data submitted since the previous evaluation. ( )
- d.** The Director may require additional or alternative tests if the results presented by the owner or operator under Paragraph 054.02.e are not satisfactory to the Director to demonstrate that there is no movement of fluid into or between USDWs resulting from the injection activity. ( )
- e.** The owner/operator must give the Director, or his designee, the opportunity to observe the mechanical integrity test by notifying the Department at least five (5) business days prior to the initiation of the test. ( )
- 03. Plugging and Abandoning Class II Wells.** (40 CFR 146.10) Requirements for Class II wells. ( )

  - a.** Prior to permanently decommissioning Class II wells, the well shall be plugged with cement in a manner which will not allow the movement of fluids either into or between underground sources of drinking water. ( )
  - b.** Placement of the cement plugs shall be accomplished by one (1) of the following: ( )

- i. The Balance method; ( )
- ii. The Dump Bailer method; ( )
- iii. The Two-Plug method; or ( )
- iv. An alternative method approved by the Director, which will reliably provide a comparable level of protection to underground sources of drinking water. ( )

c. The well to be decommissioned shall be in a state of static equilibrium with the mud weight equalized top to bottom, either by circulating the mud in the well at least once or by a comparable method prescribed by the Director, prior to the placement of the cement plug(s). ( )

**055. -- 056. (RESERVED)**

**057. CLASS II: ACTIONS ON APPROVED PERMITS.**

**01. Modification, Revocation and Reissuance, or Termination of Permits. (40 CFR 124.5) ( )**

a. Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Director's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in Subsections 057.02 and 057.03. All requests shall be in writing and shall contain facts or reasons supporting the request. ( )

b. If the Director decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. ( )

c. Modification. ( )

i. If the Director tentatively decides to modify or revoke and reissue a permit under Subsection 057.02, he shall prepare a draft permit under Subsection 048.03 incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits the Director shall require the submission of a new application. ( )

ii. In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued. ( )

iii. "Minor modifications" as defined in Subsection 057.04 are not subject to the requirements of this section. ( )

d. Termination. If the Director tentatively decides to terminate a permit under Subsection 057.03, he or she shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under Subsection 048.01. ( )

e. All draft permits (including notices of intent to terminate) prepared under this section shall be based on the administrative record as defined in Subsection 048.03. ( )

**02. Causes for Modification or Revocation and Reissuance of Permits. (40 CFR 144.39)** When the Director receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see Subsection 051.01), receives a request for modification or revocation and reissuance under Subsection 057.01, or conducts a review of the permit file) he or she may determine whether or not one (1) or



more of the causes listed in Paragraphs 051.02.a. and 051.02.b. of this rule for modification or revocation and reissuance or both exist. If cause exists, the Director may modify or revoke and reissue the permit accordingly, subject to the limitations of Paragraph 051.02.c. of this section, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. See Subparagraph 057.01.c.ii. If cause does not exist under this section or Subsection 057.04, the Director shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in Subsection 057.04 for “minor modifications” the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared. ( )

a. Causes for modification. For Class II wells the following are be causes for revocation and reissuance as well as modification. ( )

i. Alterations. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit. ( )

ii. New regulations. The standards or regulations on which the permit was based have been changed by promulgation of new or amended standards or regulations or by judicial decision after the permit was issued. ( )

iii. Compliance schedules. The Director determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. See also Paragraph 057.04.c. ( )

b. Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit: ( )

i. Cause exists for termination under Subsection 057.03, and the Director determines that modification or revocation and reissuance is appropriate. ( )

ii. The Director has received notification (as required in the permit, see Paragraph 057.04.d.) of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer (Paragraph 057.06.b.) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee. ( )

iii. A determination that the waste being injected is a hazardous waste as defined in Title 39, Chapter 4403 of the Idaho Code either because the definition has been revised, or because a previous determination has been changed. ( )

c. Facility siting. Suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance. ( )

**03. Causes For Termination of Permits. (40 CFR 144.40)** ( )

a. The Director may terminate a permit during its term, or deny a permit renewal application for the following causes: ( )

i. Noncompliance by the permittee with any condition of the permit; ( )

ii. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or ( )

iii. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; ( )

b. The Director shall follow the applicable procedures in Subsection 020.03 and Subsection 057.01 in terminating any permit under this section. ( )

04. Minor Modifications of Permits. (40 CFR 144.41) Upon the consent of the permittee, the Director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section. Any permit modification not processed as a minor modification under this section must be made for cause and with a draft permit and public notice as required in Subsections 048.01 and 048.04. Minor modifications may only: ( )

a. Correct typographical errors; ( )

b. Require more frequent monitoring or reporting by the permittee; ( )

c. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; or ( )

d. Allow for a change in ownership or operational control of a facility where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director. ( )

e. Change quantities or types of fluids injected, so long as they are within the capacity of the facility as permitted and, in the judgment of the Director, would not interfere with the operation of the facility or its ability to meet conditions described in the permit and would not change its classification. ( )

f. Change construction requirements approved by the Director pursuant to Subparagraph 051.02.a.i. (establishing UIC permit conditions), provided that any such alteration shall comply with the requirements of this Section and Subsection 045.06. ( )

g. Amend a plugging and abandonment plan which has been updated under Subparagraph 051.02.a.vi. ( )

05. Continuation of Expiring Permits. (40 CFR 144.37) ( )

a. The conditions of an expired permit continue in force until the effective date of a new permit if: ( )

i. The permittee has submitted a timely application which is a complete application for a new permit; and ( )

ii. The permittee has submitted all supplemental information requested by the Director; and IDWR suggested revision. ( )

iii. The Director, through no fault of the permittee does not issue a new permit with an effective date on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints). ( )

b. Effect. Permits continued under this section remain fully effective and enforceable. ( )

c. Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit the Director may choose to do any or all of the following: ( )

i. Initiate enforcement action based upon the permit which has been continued; ( )

ii. Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for

operating without a permit: ( )

iii. Issue a new permit with appropriate conditions; or ( )

iv. Take other actions authorized by these regulations. ( )

d. State continuation. An EPA issued permit does not continue in force beyond its time expiration date under Federal law if at that time a State is the permitting authority. A State authorized to administer the UIC program may continue either EPA or State-issued permits until the effective date of the new permits, if State law allows. Otherwise, the facility or activity is operating without a permit from the time of expiration of the old permit to the effective date of the State-issued new permit. ( )

**06. Transfer of Permits. (40 CFR 144.38)** ( )

a. Transfers by modification. Except as provided in Paragraph 051.06.b. of this rule, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under Subparagraph 057.02.b.ii.), or a minor modification made (under Paragraph 057.04.d.), to identify the new permittee. ( )

b. Automatic transfers. As an alternative to transfers under Paragraph 051.06.a. of this rule, any UIC permit for a well not injecting hazardous waste or injecting carbon dioxide for geologic sequestration may be automatically transferred to a new permittee if: ( )

i. The current permittee notifies the Director at least 30 days in advance of the proposed transfer date referred to in Subparagraph 051.06.b.ii. of this rule; ( )

ii. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them, and the notice demonstrates that the financial responsibility requirements of Subparagraph 051.02.a.vii will be met by the new permittee; and ( )

iii. The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue the permit. A modification under this paragraph may also be a minor modification under Subsection 057.04. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Subparagraph 051.06.b.ii. of this rule. ( )

**07. Records. (40 CFR 144.17) The Director may require, by written notice on a selective well-by-well basis, an owner or operator of an injection well to establish and maintain records, make reports, conduct monitoring, and provide other information as is deemed necessary to determine whether the owner or operator has acted or is acting in compliance with these rules.** ( )

**058. -- 059. (RESERVED)**

**060. CLASS II: GENERAL PROVISIONS.**

**01. Obligation to Raise Issues and Provide Information During The Public Comment Period. (40 CFR 124.13) All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Director's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period (including any public hearing) under Subsection 048.04. Any supporting materials which are submitted shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and regulations, or other generally available reference materials. Commenters shall make supporting materials not already included in the administrative record available to the Department as directed by the Director. (A comment period longer than 30 days may be necessary to give commenters a reasonable opportunity to comply with the requirements of this section. Additional time shall be granted under Subsection 048.04 to the extent that a commenter who requests additional time demonstrates the need for such time.)** ( )

- 02. Stays of Contested Permit Conditions.** (40 CFR 124.16) ( )
- a. Stays.** ( )
- i. If an Administrative Appeal of a permit under Section 003 of these rules is filed, the effect of the contested permit conditions shall be stayed and shall not be subject to judicial review pending final agency action. Uncontested permit conditions shall be stayed only until the date specified in Subparagraph 052.02.a.ii.(1) of this rule. If the permit involves a new injection well, the applicant shall be without a permit for the proposed new injection well pending final agency action.** ( )
- ii. Uncontested conditions.** ( )
- (1) Uncontested conditions which are not severable from those contested shall be stayed together with the contested conditions. The Director shall identify the stayed provisions of permits for existing injection wells. All other provisions of the permit for the existing injection well become fully effective and enforceable 30 days after the date of the notification required in Subparagraph 052.02.a.ii.(2) of this rule.** ( )
- (2) The Director shall, as soon as possible after receiving a petition for review, notify the applicant and all other interested parties of the uncontested (and severable) conditions of the final permit that will become fully effective enforceable obligations of the permit as of the date specified in Subparagraph 052.02.a.ii.(1) of this rule.** ( )
- b. Any facility or activity holding an existing permit must:** ( )
- i. Comply with the conditions of that permit during any modification or revocation and reissuance proceeding under Subsection 057.01; and** ( )
- ii. To the extent conditions of any new permit are stayed under Subsection 052.02, comply with the conditions of the existing permit which correspond to the stayed conditions, unless compliance with the existing conditions would be technologically incompatible with compliance with other conditions of the new permit which have not been stayed.** ( )
- 03. Effect of A Permit.** (40 CFR 144.35) ( )
- a. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.** ( )
- b. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.** ( )
- 04. Noncompliance and Program Reporting By The Director.** (40 CFR 144.8) **The Director shall prepare quarterly and annual reports as detailed below. The Director shall submit any reports required under this section to EPA.** ( )
- a. Quarterly reports. The Director shall submit quarterly narrative reports for facilities as follows:** ( )
- i. Format. The report shall use the following format:** ( )
- (1) Provide an alphabetized list of permittees. When two (2) or more permittees have the same name, the lowest permit number shall be entered first.** ( )
- (2) For each entry on the list, include the following information in the following order:** ( )
- (a) Name, location, and permit number of the noncomplying permittees.** ( )

(b) A brief description and date of each instance of noncompliance for that permittee. Instances of noncompliance may include one (1) or more the kinds set forth in Subparagraph 052.04.a.ii. of this rule. When a permittee has noncompliance of more than one (1) kind, combine the information into a single entry for each such permittee. ( )

(c) The date(s) and a brief description of the action(s) taken by the Director to ensure compliance. ( )

(d) Status of the instance(s) of noncompliance with the date of the review of the status or the date of resolution. ( )

(e) Any details which tend to explain or mitigate the instance(s) of noncompliance. ( )

ii. Instances of noncompliance to be reported. Any instances of noncompliance within the following categories shall be reported in successive reports until the noncompliance is reported as resolved. Once noncompliance is reported as resolved it need not appear in subsequent reports. ( )

(1) Failure to complete construction elements. When the permittee has failed to complete, by the date specified in the permit, an element of a compliance schedule involving either planning for construction or a construction step (for example, begin construction, attain operation level); and the permittee has not returned to compliance by accomplishing the required elements of the schedule within 30 days from the date a compliance schedule report is due under the permit. ( )

(2) Modifications to schedules of compliance. When a schedule of compliance in the permit has been modified under Subsections 057.02 or 057.04 because of the permittee's noncompliance. ( )

(3) Failure to complete or provide compliance schedule or monitoring reports. When the permittee has failed to complete or provide a report required in a permit compliance schedule (for example, progress report or notice of noncompliance or compliance) or a monitoring report; and the permittee has not submitted the complete report within 30 days from the date it is due under the permit for compliance schedules, or from the date specified in the permit for monitoring reports. ( )

(4) Deficient reports. When the required reports provided by the permittee are so deficient as to cause misunderstanding by the Director and thus impede the review of the status of compliance. ( )

(5) Noncompliance with other permit requirements. Noncompliance shall be reported in the following circumstances: ( )

(a) Whenever the permittee has violated a permit requirement (other than reported under Subparagraph 052.04.a.ii.(1) or 052.04.a.ii.(2) of this rule), and has not returned to compliance within forty-five (45) days from the date reporting of noncompliance was due under the permit; or ( )

(b) When the Director determines that a pattern of noncompliance exists for a facility permittee over the most recent four (4) consecutive reporting periods. This pattern includes any violation of the same requirement in two (2) consecutive reporting periods, and any violation of one (1) or more requirements in each of four (4) consecutive reporting periods; or ( )

(c) When the Director determines significant permit noncompliance or other significant event has occurred, such as a migration of fluids into a USDW. ( )

(6) All other. Statistical information shall be reported quarterly on all other instances of noncompliance by facilities with permit requirements not otherwise reported under Paragraph 052.04.a. of this rule. ( )

**b. Annual reports.** ( )

i. Annual noncompliance report. Statistical reports shall be submitted by the Director on UIC permittees indicating the total number reviewed, the number of noncomplying permittees, the number of enforcement

actions, and number of permit modifications extending compliance deadlines. The statistical information shall be organized to follow the types of noncompliance listed in Paragraph 052.04.a. of this rule. ( )

ii. In addition to the annual noncompliance report, the Director shall: ( )

(1) Submit each year a program report to EPA (in a manner and form prescribed by EPA) consisting of: ( )

(a) A detailed description of the State's implementation of its program; ( )

(b) Suggested changes, if any to the program description which are necessary to reflect more accurately the State's progress in issuing permits; ( )

(c) An updated inventory of active underground injection operations in the State. ( )

c. Schedule. ( )

i. For all quarterly reports. On the last working day of May, August, November, and February, the Director shall submit to EPA information concerning noncompliance with permit requirements by facilities in the State in accordance with the following schedule. ( )

ii. For all annual reports. The period for annual reports shall be for the calendar year ending December 31, with reports completed and available to the public no more than 60 days later. ( )

**061. -- 069. (RESERVED)**

**070. CLASS V: CRITERIA AND STANDARDS. (RULE 70)**

*[Moved from Section 030]*

~~030~~**1. Inventory Information And Permit Requirements - Class V Shallow Injection Wells** ~~(Rule 30).~~ ( )

~~04~~**a.** Authorization. As a condition of authorization, all owners or operators of shallow Class V injection wells, including improved sinkholes used for aquifer recharge, that dispose of nonhazardous and nonradioactive wastes are required to submit a Shallow Injection Well Inventory Form to the Department no later than thirty (30) days prior to commencement of construction for each new well or no later than thirty (30) days after the discovery of an existing injection well that has not previously been inventoried with the Department. Forms are available from any Department office or at the Department website at <http://www.idwr.idaho.gov>. State or local government entities ~~involved in highway and street construction and maintenance shall submit the following inventory information:~~ shall submit the following inventory information for wells associated with highway and street construction and maintenance projects. ~~(5-3-03)~~( )

~~a~~**i.** Facility name and location; and (7-1-93)

~~b~~**ii.** County in which the injection well(s) is (are) located; and (7-1-93)

~~e~~**iii.** Ownership of the well(s); and (7-1-93)

~~d~~**iv.** Name, address and phone number of legal contact; and (7-1-93)

~~e~~**v.** Type or function of the well(s); and (7-1-93)

~~f~~**vi.** Number of wells of each type; and (7-1-93)

~~g~~**vii.** Operational status of the well(s). (7-1-93)

~~02b.~~ Inventory Fees. For shallow injection wells constructed after July 1, 1997, the Shallow Injection Well Inventory Form shall be accompanied by a fee as specified in Section 42-3905, Idaho Code, payable to the Department of Water Resources. ~~New shallow injection wells used for the disposal of storm water from building roof or foundation drains are exempt from Shallow Injection Well Inventory Form filing requirements and fees of this chapter.~~ State or local government entities are exempt from Shallow Injection Well Inventory Form filing fees of ~~this chapter~~ Section 053 for wells associated with highway and street construction and maintenance, but shall comply with all other requirements of these rules. (5-3-03)(    )

~~03c.~~ **Permit Requirements.** If operation of a shallow Class V injection well is causing or may cause unreasonable contamination of a ~~drinking water source~~ USDW, or cause a violation of the ground water quality standards at a place of beneficial use, the Director shall require immediate cessation of the injection activity. Where a Class V injection well is owned or operated by an entity other than a state or local entity involved in highway and street construction and maintenance, the Director may authorize continued operation of the well through a permit that specifies the terms and conditions of acceptable operation. (5-3-03)(    )

~~04d.~~ **Permanent Abandonment Decommissioning.** Owners or operators of shallow injection wells shall notify the Director not less than thirty (30) days prior to permanent ~~abandonment decommissioning~~ of any shallow injection well. Permanent ~~abandonment decommissioning~~ shall be accomplished in accordance with procedures approved by the Director. ~~An Injection Well Abandonment Form shall be submitted with each notification.~~ (5-3-03)(    )

~~05e.~~ **Inter-Agency Cooperation.** The Department may seek the assistance of other government agencies, including cities and counties, health districts, highway districts, and other departments of state government to inventory, monitor and inspect shallow injection wells, where local assistance is needed to prevent deterioration of ground water quality, and where injection well operation overlaps with water quality concerns of other agencies or local governing entities. Assistance is to be negotiated through a memorandum of understanding between the Department and the local entity, agency, or department, and is subject to the approval of the Director. (5-3-03)

~~031.—034.~~ (RESERVED)

[Moved from Section 035]

~~0352.~~ **Application For Permit To Construct, Modify Or Maintain An Injection Well** ~~(Rule 35).~~ (    )

~~04a.~~ **Application Requirements for All Class V Wells, Except Those Class V Wells Authorized Without Permit.** (7-1-93)

~~a.i.~~ No person shall continue to maintain or use an unauthorized injection well after the effective date given in Section 42-3903, Idaho Code, unless a permit therefor has been issued by the Director. No injection well requiring a permit under Rule ~~235~~ shall be constructed, modified or maintained after the effective date given in Section 42-3903, Idaho Code, unless a permit therefor has been issued by the Director. No injection well requiring a permit shall continue to be used after the expiration of the permit issued for such well unless another application for permit therefor has been received by the Director. All applications for permit shall be on forms furnished by the Director. (5-3-03)(    )

~~b.i.~~ Each application for permit to construct, modify or maintain an injection well, as required by these rules, shall be accompanied by a filing fee as specified in Section 42-3905, Idaho Code, payable to the Department of Water Resources. For the purposes of these rules, all wells or groups of wells associated with a “Remediation Project” may be administered as one (1) “well” at the discretion of the Director. (5-3-03)

~~02b.~~ **Application Information Required.** An applicant shall submit the following information to the Director for all injection wells to be authorized by permit, unless the Director determines that it is not needed in whole or in part, and issues a written waiver to the applicant: (5-3-03)

- ~~a~~i. Facility name and location; (7-1-93)
- ~~b~~ii. Name, address and phone number of the well operator; (7-1-93)
- ~~e~~iii. Class, subclass and function of the injection well (see Rule ~~2540~~); (~~7-1-93~~)(    )
- ~~d~~iv. Latitude/longitude or legal description of the well location to the nearest ten (10) acre tract; (5-3-03)
- ~~e~~v. Ownership of the well; (7-1-93)
- ~~f~~vi. County in which the injection well is located; (7-1-93)
- ~~g~~vii. Construction information for the well; (7-1-93)
- ~~h~~viii. Quantity and general character of the injected fluids; (7-1-93)
- ~~i~~xi. Status of the well (~~to be constructed, active, temporarily abandoned, etc.~~); (~~7-1-93~~)(    )
- ~~j~~x. A topographic map or aerial photograph extending one (1) mile beyond property boundaries, depicting: (7-1-93)
  - ~~i~~(1). Location of the injection well and associated facilities described in the application; (7-1-93)
  - ~~ii~~(2). Locations of other injection wells; (7-1-93)
  - ~~iii~~(3). Approximate drainage area, if applicable; (7-1-93)
  - ~~iv~~(4). Hazardous waste facilities, if applicable; (7-1-93)
  - ~~v~~(5). All wells used to withdraw drinking water; (7-1-93)
  - ~~vi~~(6). All other wells, springs and surface waters. (7-1-93)
  - ~~ix~~x. Distance and direction to nearest domestic well; (7-1-93)
  - ~~x~~ii. Depth to ground water; and (5-3-03)
  - ~~xi~~xiii. Alternative methods of waste disposal. (7-1-93)
- ~~03c~~. **Additional Information.** The Director may require the following additional information for Class V injection wells to assess potential effects of injection: (5-3-03)
  - ~~a~~i. A topographic map showing locations of the following within a two (2) mile radius of the injection well: (5-3-03)
    - ~~i~~(1). All wells producing water; (7-1-93)
    - ~~ii~~(2). All exploratory and test wells; (7-1-93)
    - ~~iii~~(3). All other injection wells; (7-1-93)
    - ~~iv~~(4). Surface waters (including man-made impoundments, canals and ditches); (7-1-93)
    - ~~v~~(5). Mines and quarries; (7-1-93)
    - ~~vi~~(6). Residences; (7-1-93)



- ~~vii~~(7). Roads; (7-1-93)
- ~~viii~~(8). Bedrock outcrops; and (5-3-03)
- ~~ix~~(9). Faults and fractures. (7-1-93)
- ~~b~~iii. Additional maps or aerial photographs of suitable scale to accurately depict the following: (7-1-93)
- ~~i~~(1). Location and surface elevation of the injection well described in this permit; (7-1-93)
- ~~ii~~(2). Location and identification of all facilities within the property boundaries; (7-1-93)
- ~~iii~~(3). Locations of all wells penetrating the proposed injection zone or within a one-quarter (1/4) mile radius of the injection well; (7-1-93)
- ~~iv~~(4). Maps and cross sections depicting all underground sources of drinking water to include vertical and lateral limits within a one-quarter (1/4) mile radius of the injection well, their position relative to the injection zone and the direction of water movement: local geologic structures; regional geologic setting. (7-1-93)
- ~~e~~iv. A comprehensive report of the following information: (7-1-93)
- ~~i~~(1). A tabulation of all wells penetrating the proposed injection zone, listing owner, lease holder and operator; well identification (permit) number; size, weight, depth and cementing data for all strings of casing; (7-1-93)
- ~~ii~~(2). Description of the quality and quantity of fluids to be injected; (7-1-93)
- ~~iii~~(3). Geologic, hydrogeologic, and physical characteristics of the injection zone and confining beds; (5-3-03)
- ~~iv~~(4). Engineering data for the proposed injection well; (7-1-93)
- ~~v~~(5). Proposed operating pressure; (7-1-93)
- ~~vi~~(6). A detailed evaluation of alternative disposal practices; (7-1-93)
- ~~vii~~(7). A plan of corrective action for wells penetrating the zone of injection, but not properly sealed or ~~abandoned~~ decommissioned; and ~~(5-3-03)~~(    )
- ~~viii~~(8). Contingency plans to cope with all shut-ins or well failures to prevent the migration of unacceptable fluids into underground sources of drinking waters. (7-1-93)
- ~~ix~~v. Name, address and phone number of person(s) or firm(s) supplying the technical information and/or designing the injection well; (7-1-93)
- ~~x~~vi. Proof that the applicant is financially responsible, through a performance bond or other appropriate means, to ~~abandon~~ decommission the injection well in ~~accordance with the conditions of the permit~~ a manner approved by the Director. ~~(5-3-03)~~(    )
- ~~xi~~04d. Other Information. The Director may require of any applicant such additional information as may be necessary to demonstrate that the proposed or existing injection well will not endanger ~~drinking water sources~~ a USDW. The Director will not complete the processing of an application for which additional information has been requested until such time as the additional information is supplied. The Director may return any incomplete application and will not process such application until such time as the application is received in complete form. ~~(7-1-93)~~(    )

~~036.---039.~~      ~~(RESERVED)~~

*[Moved from Section 040]*

**0403.**    **Application Processing** ~~(Rule 40).~~      ( )

~~04a.~~    **Draft Permit.** After all application information is received and evaluated, the Director will prepare a draft permit or denial, which will include the application for permit, permit conditions or reasons for denial, and any compliance schedules or monitoring requirements. ~~Closed-loop heat exchange wells (Subclass 5A7), as described by Rule Subsection 040.05 are exempt from the draft permit provisions of this rule.~~ In preparing the draft permit or denial, the Director shall consider the following factors:      (7-1-93)( )

- ~~a.i.~~      The availability of economic and practical alternative means of disposal;      (7-1-93)
- ~~b.ii.~~     The application of best management practices to the facilities and/or area draining into the well;      (7-1-93)
- ~~e.iii.~~    The availability of economical, practical means of treating or otherwise reducing the amount of contaminants in the injected fluids;      (7-1-93)
- ~~d.iv.~~    The quality of the receiving ground water, its category, its present and future beneficial uses or interconnected surface water;      (7-1-93)
- ~~e.v.~~      The location of the injection well with respect to drinking water supply wells; and      (5-3-03)
- ~~f.vi.~~     Compliance with the IDAPA 58.01.11, "Ground Water Quality Rule."      (5-3-03)

~~02b.~~    **Public Notice.** The Director will provide public notice of any draft permit to construct, maintain or modify a Class V injection well by means of a legal notice in a newspaper of general circulation in the county in which the well is located. The Director may give additional notice as necessary to adequately inform the interested public and governmental agencies. There shall be a period of at least thirty (30) days following publication for any interested person to submit written comments and to request a fact-finding hearing. The hearing will be held by the Director if deemed necessary.      (7-1-93)

~~03c.~~    **Review by the Directors of Other State Agencies.** The Directors of other state agencies, as determined by the Director, shall be provided the opportunity to review and comment on draft permits. Comments shall be submitted to the Director within thirty (30) days of the public or legal notice.      (7-1-93)

~~04.~~      **Fact-Finding Hearings.** ~~At the Director's discretion, or upon motion of any interested individual, the Director may elect to hold a fact finding hearing. Said hearing will be held at a location in the geographical area of the injection well, and may consider related groups of draft permits. Notice of said hearing will be provided at least thirty (30) days in advance of the hearing by regular mail to the applicant and to the person or persons requesting the hearing. Public notice of the fact finding hearing will be made by means of press release to a newspaper of general circulation in the county of the application.~~      (7-1-93)

~~05d.~~    **Closed Open-Loop Heat Exchange Pump Return Wells** (Subclass 5A7).      ( )

~~i.~~      An closed open-loop heat exchange pump return well greater than eighteen (18) feet in depth to be used solely for disposal of heat pump water at a rate not exceeding fifty (50) gpm does not require a draft permit and is not subject to a recurring permit cycle, however, registration of the well with the Department and submittal of a filing fee as specified in Section 42-3905, Idaho Code is required. The Director reserves the right to override the exemptions from the draft permit and permit cycle requirements.      ( )

~~ii.~~     *Public notification of the application shall be by a posted notice at the regional office of the Department where the application is made, or other method approved by the Director, and shall contain the following standard operating conditions: Rules for Construction and Use of Injection Wells shall be followed. Violation of the*

~~standards stated in Rule Subsection 050.04 is adequate cause for cancellation of the permit; Injection shall be restricted to heat pump water; A closed loop system shall be maintained to prevent contamination of the injected fluids. A protected air vent may be installed if needed, and a sampling port is required; Additives shall be used in the water only if approved by the Department of Water Resources; Should the use of the well lead to degradation of the quality of the ground water, this permit may be canceled; A well log shall be submitted to the Department within thirty (30) days of the completion of the well. Permits for large capacity closed loop heat exchange wells injecting over fifty (50) gpm will be processed with a draft permit and public notice as described in these rules. An open-loop heat pump return well greater than eighteen (18) feet in depth to be used solely for disposal of heat pump return water at a rate exceeding fifty (50) gpm is subject to the requirements of Subsections 070.02 and 070.03 of these rules.~~  
(5-3-03)( )

e. Fact-Finding Hearings. At the Director's discretion, or upon motion of any interested individual, the Director may elect to hold a fact-finding hearing. Said hearing will be held at a location in the geographical area of the injection well. Notice of said hearing will be provided at least thirty (30) days in advance of the hearing by regular mail to the applicant and to the person or persons requesting the hearing. Public notice of the fact-finding hearing will be made by means of press release to a newspaper of general circulation in the county of the application.  
( )

~~041.—044. (RESERVED)~~

[Moved from Section 045]

**045. The Director's Action On Draft Permits And Duration Of Approved Permits** ~~(Rule 45)~~. The role of the Director is to determine whether or not the injection wells and their respective owners or operators are in compliance with the intent of these rules, thus protecting the ground waters of the state against unreasonable contamination or deterioration of quality and preserving them for diversion to beneficial uses. (7-1-93)

**01a. Consideration.** The Director will consider the following factors in taking final action on draft permits: (7-1-93)

**i.** The likelihood and consequences of the injection well system failing; (7-1-93)

**ii.** The long term effects of such disposal or storage; (7-1-93)

**iii.** The recommendations and related justifications of the Directors of other state agencies and the public; (5-3-03)

**iv.** The potential for violation of ground water quality standards at the point of injection or the point of beneficial use; and (5-3-03)

**v.** Compliance with the Idaho Ground Water Quality Plan. (5-3-03)

**02b. Issuance of Permit.** After considering the draft permit for construction, modification, or maintenance, and all matters relating thereto, the Director shall issue a permit if the standards and criteria of Rule 50 Subsection 070.05 will be met and drinking water sources USDW's will not otherwise be unreasonably affected. If the Director finds that the standards and criteria cannot be met or that ground water sources cannot otherwise be protected from unreasonable contamination at all times, the draft permit may be denied or a permit may be issued with conditions designed to protect ground water sources. The Director's decision shall be in writing and a copy shall be mailed by regular mail to the applicant and to all persons who commented in writing on the draft permit or appeared at a hearing held to consider the draft permit. (5-3-03)( )

**03c. Permit Conditions and Requirements.** Any permit issued by the Director shall contain conditions to insure that ground water sources will be protected from waste, unreasonable contamination, or deterioration of ground water quality that could result in violations of the ground water quality standards. In addition to specific construction, operation, maintenance and monitoring requirements that the Director finds necessary, each permit shall be subject to the standard conditions and requirements of this rule. (5-3-03)

**~~04~~d. Construction Requirements.** (7-1-93)

**~~a~~i.** Well drillers or other persons involved with the construction of any injection well requiring a permit shall not commence construction on the facility until a certified copy of the approved permit is obtained from the Director. (7-1-93)

**~~b~~ii.** Deep injection wells shall be constructed by a licensed water well driller to conform with the current Minimum Well Construction Standards and the conditions of the permit, except that a driller's license is not required for the construction of a driven mine shaft or a dug hole. (7-1-93)

**~~e~~iii.** Shallow injection wells authorized by permit shall be constructed in accordance with the conditions of the permit. Rule-authorized shallow injection wells shall be constructed as shown or described in the inventory submittal. (5-3-03)

**~~d~~iv.** Injection wells shall be constructed to prevent the entrance of any fluids other than specified in the permit. (7-1-93)

**~~e~~v.** Injection wells shall be constructed to prevent waste of artesian fluids or movement of fluids from one aquifer into another. (7-1-93)

**~~f~~vi.** When construction or modification of an injection well has been completed, the owner or operator shall inform the Director of completion on a form provided by the Department. (7-1-93)

**~~g~~vii.** A sampling port shall be provided if the injection well system is enclosed. (5-3-03)

**~~h~~viii.** All new injection wells constructed into alluvial formations shall have a minimum ten (10) foot separation from the bottom of the well and seasonal high ground water. (5-3-03)

**~~i~~(1)** Injection wells installed into fractured basalt are exempt from separation distances. (5-3-03)

**~~ii~~(2)** The Director may reduce separation distance requirements if the quality of injected fluids are improved through additional treatment or BMPs. (5-3-03)

**~~(3)~~** Heat pump return wells (sub-class 5A7) are exempt from the separation distance requirement of this section. ( )

**~~05~~e. Operational Conditions.** (7-1-93)

**~~a~~i.** The injection well shall not be used until the construction, operation and maintenance requirements of the permit are met and provisions are made for any required inspection, monitoring and record keeping. (7-1-93)

**~~b~~ii.** Injection of any contaminant as defined in Rule 50 at concentrations exceeding the standards set in Paragraph 070.05.c. into a present or future drinking or other ground water source that may cause a health hazard or adversely affect a designated and protected use is prohibited. (~~7-1-93~~)( )

**~~e~~iii.** The injection well owner or operator shall develop approved procedures to detect constructional or operational failure in a timely fashion, and shall have contingency plans to cope with the well failure. (7-1-93)

**~~d~~iv.** Authorized representatives of the Department shall be allowed to enter, inspect and/or sample: (7-1-93)

**~~i~~(1)** The injection well and related facilities; (7-1-93)

**~~ii~~(2)** The owner or operator's records of the injection operation; (7-1-93)

**~~iii~~(3)** Monitoring instrumentation associated with the injection operation; and (7-1-93)

- ~~iv~~(4) The injected fluids. (7-1-93)
- ~~ev~~. The injection facilities shall be operated and maintained to achieve compliance with all terms and conditions of this permit. (7-1-93)
- ~~i~~(1) Proper operation and maintenance includes effective performance, adequate funding, operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures; (7-1-93)
- ~~ii~~(2) If compliance cannot be met, the owner shall take corrective action ~~(See Rule 065)~~ as determined by the Director or terminate injection. ~~(5-3-03)~~(    )
- ~~fvi~~. The owner shall mitigate any adverse effects resulting from non-compliance with the terms and conditions of the permit. (7-1-93)
- ~~gvii~~. If the injection well was constructed prior to issuance of the permit, the well shall be brought into compliance with the terms and conditions of the permit in accordance with the schedule of compliance issued by the Director. (7-1-93)
- ~~hvi~~iii. The permit shall not convey any property rights. (7-1-93)
- ~~06f~~. Conditions of Permanent ~~and Temporary Abandonment~~ Decommissioning. ~~(7-1-93)~~(    )
- ~~ai~~. Notice of ~~abandonment for wells intent to be~~ permanently ~~abandoned~~ decommission a well shall be submitted ~~on a form provided by to~~ the Director not less than thirty (30) days prior to commencement of the ~~abandonment~~ decommissioning activity. ~~(5-3-03)~~(    )
- ~~bii~~. The method of permanent ~~abandonment~~ decommissioning for all injection wells shall be approved by the Director prior to commencement of the ~~abandonment~~ decommissioning activity ~~and shall be in accordance with current well construction standards. Permanent abandonment requires plugging the well bore with bentonite grout, cement grout, concrete, or other impermeable material to prevent the upward or downward migration of fluids.~~ ~~(5-3-03)~~(    )
- ~~eiii~~. Notice of completion of permanent ~~abandonment~~ decommission shall be submitted to the Director within thirty (30) days of completion. ~~(7-1-93)~~(    )
- ~~d~~iv. All deep injection wells that are to be permanently ~~abandoned~~ decommissioned shall be plugged ~~with cement grout or other impervious material in such a manner as to prevent movement of fluids into or between drinking or other ground water sources~~ in accordance with current Well Construction Standards and/or ~~the conditions of the permit.~~ ~~(7-1-93)~~(    )
- ~~ev~~. Following permanent cessation of use, or where an injection well is not completed, the Director shall be notified. ~~Abandonment~~ Decommissioning procedures or other action, as prescribed by the Director, shall be conducted. ~~(7-1-93)~~(    )
- ~~fvi~~. The injection well owner or operator ~~shall maintain the financial~~ has the responsibility to insure that the injection operation is ~~abandoned~~ decommissioned as prescribed. ~~(7-1-93)~~(    )
- ~~g~~ ~~Temporary abandonment, including use of a welded steel plate to cover the well opening, or a packer to occlude the well bore does not exempt the owner or operator from the requirement to obtain a permit. A well that is permitted as temporarily abandoned must receive a new permit in order to inject fluids.~~ ~~(7-1-93)~~
- ~~07g~~. Duration of Approved Permits. The length of time that a permit may be in effect for Class V wells requiring permits shall not exceed ten (10) years. (7-1-93)
- ~~046.—049:~~ (RESERVED)

[Moved from Section 050]

**050. Standards For The Quality Of Injected Fluids And Criteria For Location And Use** ~~(Rule 50)~~. ( )

**01a.** General. These standards, which are minimum standards that are to be adhered to for all deep injection wells and shallow injection wells requiring permits and rule-authorized wells not requiring permits, are based on the premise that if the injected fluids meet ground water quality standards for physical, chemical and radiological contaminants, and if ground water produced from adjacent points of diversion for beneficial use meets the water quality standards as defined ~~by Rule 010~~ **in Section 010 of these rules**, then that aquifer will be protected from unreasonable contamination and will be preserved for diversion to beneficial uses. The Director may, however, when it is deemed necessary, require specific injection wells to be constructed and operated in compliance with additional requirements, such as best management practices (BMPs), so as to protect the ground water resource from deterioration and preserve it for diversion to beneficial use. (5-3-03)( )

**02b.** Waivers. A waiver of one (1) or more standards may be granted by the Director if it can be demonstrated by the applicant that the contaminants in injected fluid will not endanger a ground water source for any present or future beneficial use. (5-3-03)

**03c.** Standards for Quality of Fluids Injected ~~by~~ **into** Class V Wells. (5-3-03)( )

**i.** Ground water quality standards for chemical and radiological contaminants in injected fluids. After the effective date of these standards, the following limits shall not be exceeded in injected fluids from a well when such fluids will or are likely to reach a ~~drinking water source~~ **USDW**: (5-3-03)( )

**(1)** Chemical contaminants. The concentration of each chemical contaminant in the injected fluids shall not exceed the ground water quality standard for that chemical contaminant, or the concentration of each contaminant in the receiving water, whichever requirement is less stringent; and (5-3-03)

**(2)** Radiological contaminants. Radiological levels of the injected fluids shall not exceed those levels specified by the ground water quality standards. (5-3-03)

**ii.** Restrictions on injection of fluids containing biological contaminants. The following restrictions apply to biological contaminants included in the ground water quality standard in injected fluids. Coliform bacteria: injected fluids containing coliform bacteria are subject to the following restrictions: (5-3-03)

**(1)** Contamination of ground water produced at any existing point of diversion for beneficial use, or any point of ~~diversion for~~ beneficial use developed in the future, by injected fluids is prohibited; (5-3-03)( )

**(2)** The Director may require the use of best management practices (BMPs) to reduce the concentration of coliform bacteria in the injected fluids; (5-3-03)

**(3)** The Director may require the use of water treatment technology, including ozonation and chlorination devices, sand filters, and settling pond specifications to reduce the concentration of coliform bacteria in injected fluids; (5-3-03)

**(4)** Ground water produced from points of diversion for beneficial use adjacent to injection wells that dispose of fluids containing coliform bacteria in concentrations greater than the current ground water quality standard shall be subject to monitoring for bacteria by the owner/operator of the injection well. A waiver of the monitoring requirement may be granted by the Director when it can be demonstrated that injection will not result in unreasonable contamination of ground water produced from these adjacent points; (5-3-03)

**(5)** Construction of new Subclass 5F1 injection wells, and other shallow and deep injection wells, as specified by the Director, that are likely to exceed the current ground water quality standard for coliform bacteria at the point of beneficial use is prohibited; and (5-3-03)

~~vi~~(6) At no time shall any fluid containing or suspected of containing fecal contaminants of human origin be injected into any Class V injection well authorized under these rules. (7-1-93)

~~e~~iii. Physical, visual and olfactory characteristics. The following restrictions apply to physical, visual and olfactory characteristics of injected fluids. Temperature, color, odor, turbidity, conductivity and pH: the temperature, color, odor, conductivity, turbidity, pH or other characteristics of the injected fluid may not result in the receiving ground water becoming less suitable for diversion to beneficial uses, as determined by the Director. (7-1-93)

~~iv~~. Contamination by an injection well of ground water produced at an existing point of diversion for beneficial use, or a point of diversion for beneficial use developed in the future, shall not exceed water quality standards defined ~~by Rule in Subsection 010-57~~ of these rules. (5-3-03)( )

~~04d~~. Criteria for Location and Use of Class V Wells Requiring Permits. (7-1-93)

~~a~~i. A Class V well requiring a permit may be required to be located a minimum distance, as determined from Table 1, from any point of diversion for beneficial use that could be harmed by bacterial contaminants. This requirement is not applicable to injection wells injecting wastes of quality equal to or better than adopted ground water quality standards in all respects. In addition, Class V wells may be required to be located at such a distance from a point of diversion for beneficial use as to minimize or prevent ground water contamination resulting from unauthorized or accidental injection, as determined by the Director. (5-3-03)

~~b~~ii. These location requirements in Table 1 may be waived, as per ~~Rule Subsection 050.02 Paragraph 070.05.b.~~, when the applicant can demonstrate that any springs or wells within the calculated perimeter of the generated perched water zone will not be contaminated by the applicant's waste disposal or injection well. Monitoring by the applicant of the production wells or springs in question may be required to demonstrate that they are not being contaminated.

Determined Radii of Perched Water Zones Based on Maximum Average Weekly Injection Rates (cfs) of Class V Injection Wells *	
Injection (cfs)	Radius of Generated Perched Water Zone (ft)
0 - 0.20	800
0.20 - 0.60	1,400
0.61 - 1.00	1,800
1.01 - 2.00	2,500
2.01 - 3.00	3,000
3.01 - 4.00	3,500
4.01 - 5.00	4,000
Greater than 5.00	As determined by the Director

\* Injection rates shall be based on the average volume of wastes injected by the well during the week of greatest injection in an average water year. (5-3-03)( )

~~05e~~. Standards for the Quality of Fluids Injected by Subclass 5A7 Wells (~~closed~~ open-loop heat exchange pump return). (7-1-93)( )

~~a~~i. The quality of fluids injected by a Subclass 5A7 injection well shall comply with ground water quality standards or shall be equal to the quality of the ground water source to the heat ~~exchanger~~ pump, whichever is less stringent. (5-3-03)( )

~~b~~ii. If the quality of the ground water source does not meet ground water quality standards, the injected fluids must be returned to the formation containing the ground water source. (5-3-03)

~~e~~iii. The temperature of the injected fluids shall not impair the designated beneficial uses of the receiving ground water. (7-1-93)

~~d~~iv. All Rule-authorized Injection Wells shall conform to the ground water quality standards at the point of injection and not cause any water quality standards to be violated at any point of beneficial use. (5-3-03)

~~051. -- 054.~~ (RESERVED)

**[Moved from Section 055]**

~~055~~6. **Monitoring, Record Keeping And Reporting Requirements** (~~Rule 55~~). The Director may require monitoring, record keeping and reporting by any owner or operator if the Director finds that the well may adversely affect a ground water source or is injecting a contaminant that could have an unacceptable effect upon the quality of the ground waters of the state. (5-3-03)

~~01~~a. Monitoring. (7-1-93)

~~a~~i. Any injection authorized by the Director shall be subject to monitoring and record keeping requirements as conditions of the permit. Such conditions may require the installation, use and maintenance of monitoring equipment or methods. The Director may require where appropriate, but is not limited to, the following: (7-1-93)

~~i~~(1) Monitoring of injection pressures and pressures in the annular space between casings; (7-1-93)

~~ii~~(2) Flow rate and volumes; (7-1-93)

~~iii~~(3) Analysis of quality of the injected fluids for contaminants that are subject to limitation or reduction under the conditions of the permit; or contaminants which the Director determines could have an unacceptable effect on the quality of the ground waters of the state, and which the Director has reason to believe are in the injected fluids; (7-1-93)

~~iv~~(4) Monitoring of ground water through special monitoring wells or existing points of diversion for beneficial use in the zone of influence as determined by the Director; (7-1-93)

~~v~~(5) A demonstration of the integrity of the casing, tubing or seal of the injection well. (7-1-93)

~~b~~ii. The frequency of required monitoring shall be specified in the permit when issued, except that the Director at any time may, in writing, require additional monitoring and reporting. (7-1-93)

~~e~~iii. All monitoring tests and analysis required by permit conditions shall be performed in a state certified laboratory or other laboratory approved by the Director ~~in accordance with the recommended methods set forth in the latest edition of "Standard Methods for the Examination of Water and Wastewater," American Public Health Association; "Methods for Chemical Analysis of Water and Wastes," EPA, American Society for Testing and Materials Standards; or other authority recognized by the Director.~~ (7-1-93)( )

~~d~~iv. Any field instrumentation used to gather data, when specified as a condition of the permit, shall be required by the Director to be tested and maintained in such a manner as to ensure the accuracy of the data. (7-1-93)

~~e~~v. All samples and measurements taken for the purpose of monitoring shall be representative of the monitoring activity and fluids injected. (7-1-93)

~~02~~b. Record Keeping. The permittee shall maintain records of all monitoring activities to include: (7-1-93)



- ~~a~~i. Date, time and exact place of sampling; (7-1-93)
  - ~~b~~ii. Person or firm performing analysis; (7-1-93)
  - ~~c~~iii. Date of analysis, analytical methods used and results of analysis; (7-1-93)
  - ~~d~~iv. Calibration and maintenance of all monitoring instruments; and (7-1-93)
  - ~~e~~v. All original tapes, strip charts or other data from continuous or automated monitoring instruments. (7-1-93)
- ~~03. **Five Year Retention of Records.** The permittee shall retain for a period of five (5) years all records of monitoring, construction and application information. The period of retention shall be extended during the course of any litigation regarding the injection of contaminants by the permittee or when requested by the Director. This requirement shall continue in effect during the five (5) year period following permanent abandonment of a well. (7-1-93)~~
- ~~04~~c. Reporting. (7-1-93)
    - ~~a~~i. Monitoring results obtained by the permittee pursuant to the monitoring requirements prescribed by the Director shall be reported to the Director as required by permit conditions. (7-1-93)
    - ~~b~~ii. The Director shall be notified in writing by the permittee within five (5) days after the discovery of violation of the terms and conditions of the permit. If the injection activity endangers human health or a public or domestic water supply, use of the injection well shall be immediately discontinued and the owner or operator shall immediately notify the Director. Notification shall contain the following information: (7-1-93)
      - ~~i~~(1) A description of the violation and its cause; (7-1-93)
      - ~~ii~~(2) The duration of the violation, including dates and times; if not corrected or use of the well discontinued, the anticipated time of correction; and (5-3-03)
      - ~~iii~~(3) Steps being taken to reduce, eliminate and prevent recurrence of the injection. (7-1-93)
    - ~~c~~iii. Where the owner or operator becomes aware of failure to submit any relevant facts in any permit application or report to the Director, that person shall promptly submit such facts or information. (7-1-93)
    - ~~d~~iv. The permittee shall furnish the Director, within a time specified by the Director, any information which the Director may request to determine compliance with the permit. (7-1-93)
    - ~~e~~v. All applications for permits, notices and reports submitted to the Director shall be signed and certified. (7-1-93)
    - ~~f~~vi. The Director shall be notified in writing of planned physical alterations or additions to any facility related to the permitted injection well operation. (7-1-93)
    - ~~g~~vii. Additional information to be reported to the Director in writing: (7-1-93)
      - ~~i~~(1) Transfer of ownership; (7-1-93)
      - ~~ii~~(2) Any change in operational status not previously reported; (7-1-93)
      - ~~iii~~(3) Any anticipated noncompliance; and (5-3-03)
      - ~~iv~~(4) Reports of progress toward meeting the requirements of any compliance schedule attached or assigned to this permit. (7-1-93)

~~056. — 059.~~ (RESERVED)

*[Moved from Section 060]*

~~060~~7. **Permit Assignable** ~~(Rule 60)~~. Permits ~~shall~~ may be assignable to a new owner or operator of an injection well if the new owner or operator ~~shall~~, within thirty (30) days of the change, ~~notifies~~ ies the Director of such change. The new owner or operator shall be responsible for complying with the terms and conditions of the permit from the time that such change takes place. ~~(7-1-93)~~ ( )

~~077~~1. -- 999. (RESERVED)

**IDAPA 38 - DEPARTMENT OF ADMINISTRATION**

**38.04.06 - RULES GOVERNING USE OF THE EXTERIOR OF STATE PROPERTY  
IN THE CAPITOL MALL AND OTHER STATE FACILITIES**

**DOCKET NO. 38-0406-1201**

**NOTICE OF RULEMAKING - RESCISSION OF TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the rescission of temporary rule is October 3, 2012.

**AUTHORITY:** In compliance with Section 67-5226, Idaho Code, notice is hereby given that this agency has rescinded the temporary rule previously adopted under this docket. The action is authorized pursuant to Section 67-5709, Idaho Code.

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

As directed by the 2012 Idaho Legislature, the Department established these temporary rules governing the use of state properties. The Department accepted and reviewed comments concerning these temporary rules. The Department is rescinding these temporary rules and issuing new temporary and proposed rules under a separate docket to avoid confusion. The new temporary and proposed rules incorporate many of the comments received on these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the rescission of this temporary rule, contact Teresa Luna, Director, at (208)332-1826.

DATED this 10th day of September, 2012.

Teresa Luna, Director  
Department of Administration  
650 W. State St.  
P. O. Box 83720  
Boise, ID 83720-0013  
Phone: (208) 332-1826  
Fax: (208) 334-2307

## **IDAPA 38 - DEPARTMENT OF ADMINISTRATION**

### **38.04.06 - RULES GOVERNING USE OF THE EXTERIOR OF STATE PROPERTY IN THE CAPITOL MALL AND OTHER STATE FACILITIES**

#### **DOCKET NO. 38-0406-1202 (NEW CHAPTER)**

#### **NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is October 3, 2012.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 67-5709, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

These rules set forth how state properties may be used for purposes other than the conduct of public business. The rules establish the allowed uses and set parameters of use to ensure the safety of persons and property. These rules replace temporary rules issued in the spring of 2012. These rules incorporate many of the comments received in response to the original temporary rules.

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

Section 67-5709, Idaho Code, directs that the Department issue rules within thirty (30) days of the enactment of revisions in the 2012 legislative session. These rules incorporate changes arising from public comment on temporary rules issued in response to the Legislature's direction.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 these rules incorporate public comment submitted on the original temporary rules and because further consensus between interested parties on the content of the rules is improbable.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Teresa Luna, Director, at (208)332-1826.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 10th day of September, 2012.

Teresa Luna, Director  
Department of Administration  
650 W. State St.  
P. O. Box 83720  
Boise, ID 83720-0013  
Phone: (208) 332-1826  
Fax: (208) 334-2307

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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 38-0406-1202**

**IDAPA 38**  
**TITLE 04**  
**CHAPTER 06**

**38.04.06 - RULES GOVERNING USE OF THE EXTERIOR OF STATE PROPERTY  
IN THE CAPITOL MALL AND OTHER STATE FACILITIES**

**000. LEGAL AUTHORITY.**

Section 67-5709, Idaho Code, gives the Director of the Department of Administration authority to promulgate rules governing the state properties in the Capitol Mall and other state facilities. (10-3-12)T

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited as IDAPA 38.04.06, "Rules Governing Use of the Exterior of State Property in the Capitol Mall and Other State Facilities." (10-3-12)T

**02. Scope.** These rules contain the provisions for use of the exterior of the Capitol Mall Office Properties, the Capitol Annex, the Parking Facilities, the Other State Properties, and the Multi-agency Facilities. Rules governing the interior of the Capitol Office Mall Properties, the Other State Properties, and the Multi-agency Facilities are codified under IDAPA 38.04.07, "Rules Governing Use of the Interior of State Property in the Capitol Mall and Other State Facilities." Rules governing the use of the exterior of the Capitol are codified under IDAPA 38.04.08, "Rules Governing Use of Idaho State Capitol Exterior." Rules governing parking are codified under IDAPA 38.04.04, "Capitol Mall Parking Rules." (10-3-12)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 cost at the Department's office. (10-3-12)T

**003. ADMINISTRATIVE APPEALS.**

These rules do not provide for appeals of the requirements for use of the State Facilities. (10-3-12)T

**004. INCORPORATION BY REFERENCE.**

There are no documents that have been incorporated by reference into these rules. (10-3-12)T

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

**01. Office Hours.** The Department is open from 8 a.m. to 5 p.m. except Saturday, Sunday, and legal holidays. (10-3-12)T

**02. Mailing Address.** The Department's mailing address is P.O. Box 83720, Boise, Idaho 83720-0013. (10-3-12)T

**03. Street Address.** The Department's principal place of business is located at 650 West State Street, Boise, Idaho 83702-5972. (10-3-12)T

**04. Website Address.** The Department's website address is <http://adm.idaho.gov/>. (10-3-12)T

**006. PUBLIC RECORDS ACT COMPLIANCE.**

All records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (10-3-12)T

**007. SEVERABILITY.**

Pursuant to IDAPA 44.01.01, "Rules of the Administrative Rules Coordinator," all administrative rules in Idaho are presumed severable unless specifically provided to the contrary. If any rule, or part thereof, or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of any remaining portion. (10-3-12)T

**008. -- 009. (RESERVED)**

**010. DEFINITIONS.**

**01. Camping.** Any activity prohibited under Section 67-1613, Idaho Code. (10-3-12)T

**02. Capitol Annex.** The grounds, exterior of buildings, exterior of improvements, and real property located at 514 West Jefferson Street, Boise, Idaho and occupying block 65 as shown on the Boise City original townsite plat filed in the Ada County Recorder's office in Book 1 on page 1. (10-3-12)T

**03. Capitol Mall Office Properties.** The grounds, exterior of buildings, exterior of improvements, and real property set forth in Section 67-5709(2)(a) and (b), Idaho Code. The Capitol Mall Office Properties do not include the Idaho State Capitol or its grounds or the Capitol Mall Annex. (10-3-12)T

**04. Commemorative Installation.** Any statue, monument, sculpture, memorial or landscape feature designed to recognize a person, group, event or element of history. (10-3-12)T

**05. Department.** The Department of Administration. (10-3-12)T

**06. Director.** The Director of the Department of Administration or his designee. (10-3-12)T

**07. Event.** Any press conference, performance, ceremony, presentation, meeting, rally, reception, demonstration, protest, educational tour or gathering of people held at the State Facilities. As used in this definition, a gathering consists of two (2) or more people. (10-3-12)T

**08. Exhibit.** Any temporary Commemorative Installation and any attended or unattended display, including, but not limited to, equipment, machines, vehicles, products, samples, paintings, sculptures, arts and crafts, photographs, signs, banners or other graphic displays. (10-3-12)T

**09. Multi-Agency Facilities.** The grounds, exterior of buildings, exterior of improvements, and real property set forth in Section 102 of these rules. (10-3-12)T

**10. Other State Properties.** The grounds, exterior of buildings, exterior of improvements, and real property set forth in Section 101 of these rules. (10-3-12)T

**11. Parking Facilities.** The facilities, exterior of buildings, exterior of improvements, and real

property set forth in Section 67-5709(2)(b), Idaho Code. (10-3-12)T

**12. Private Event or Private Exhibit.** Any activity sponsored or initiated by a member of the public that is open only to invited or qualifying individuals or groups. Private Events and Private Exhibits include, but are not limited to, weddings, dinners, award ceremonies, memorials, and seminars. (10-3-12)T

**13. Public Use.** Use that is not an Event, Private Event, Exhibit, Private Exhibit or use by a public officer, official, employee, contractor, agency, board or commission for state of Idaho business. Public Use includes, but is not limited to, the following: (10-3-12)T

**a.** The transit of individuals through the State Facilities unrelated to an Event or Exhibit; (10-3-12)T

**b.** Incidental, short-term recreational use of the State Facilities unrelated to an Event or Exhibit; and (10-3-12)T

**c.** The conduct of public business with any state of Idaho agency, board, commission, officer or elected official acting on behalf of the state of Idaho. (10-3-12)T

**14. Security Personnel.** A state of Idaho employee or a staff member of a state of Idaho contractor whose job duties include monitoring compliance with and enforcing these rules. (10-3-12)T

**15. State Events and Exhibits.** All functions initiated and controlled by any state of Idaho agency, board, commission, officer or elected official acting on behalf of the state of Idaho. (10-3-12)T

**16. State Facilities.** The Capitol Mall Office Properties, the Capitol Annex, the Multi-agency Facilities, the Parking Facilities and the Other State Properties. Use of the phrase "at the State Facilities" shall include the exterior of buildings, exterior of improvements and the grounds and real property comprising the State Facilities. (10-3-12)T

**17. State Maintenance and Improvements.** Maintenance or improvement of the State Facilities by the state of Idaho or its contractors. Maintenance for the purpose of this definition includes, but is not limited to, grounds maintenance such as mowing, watering, landscaping, aerating, resodding, fertilizing and planting, and structural maintenance such as pressure washing, painting, window cleaning and re-glazing. Improvement for the purpose of this definition includes, but is not limited to, the following: construction of new buildings or portions of buildings; renovations to existing buildings; the installation of permanent structures and equipment such as benches, sprinklers, flagpoles, monuments and memorials; and, the installation of temporary equipment and structures such as construction fencing, generators and portable buildings. (10-3-12)T

**011. -- 100. (RESERVED)**

**101. OTHER STATE PROPERTIES.**

These rules shall apply to the following Other State Properties pursuant to the request of the state of Idaho public entity owning or controlling the property: (10-3-12)T

**01. Idaho State Historical Society Properties.** (10-3-12)T

**a.** The following properties owned or operated by the Idaho State Historical Society shall be Other Properties under these rules: (10-3-12)T

**i.** Idaho State Historical Museum, located at 610 North Julia Davis Drive, Boise, Idaho. (10-3-12)T

**ii.** Old U.S. Assay Office, located at 210 Main Street, Boise, Idaho. (10-3-12)T

**iii.** Old Penitentiary site located in Boise, Idaho and defined in Section 58-337, Idaho Code. (10-3-12)T

**iv.** Idaho History Center, located at 2205 Old Penitentiary Road, Boise, Idaho. (10-3-12)T

v. Franklin Historic Properties, located in Franklin, Idaho. The Franklin Historic Properties include the Franklin Co-operative Mercantile Institution Building, the Hatch House, the Doney House, and the Relic Hall. (10-3-12)T

vi. Pierce Courthouse, located in Pierce, Idaho. (10-3-12)T

vii. Rock Creek Station and Stricker Homesite, located at 3715 Stricker Cabin Road, Hansen, Idaho. (10-3-12)T

**b.** The following sections of these rules shall apply to the Idaho State Historical Society Properties set forth in Paragraph 101.01.a. of these rules only as modified by this Paragraph 101.01.b.: (10-3-12)T

i. Subsection 010.04. "Director" shall mean the Executive Director of the Idaho State Historical Society when these rules are applied to the Idaho State Historical Society Properties. (10-3-12)T

ii. Subsection 200.01. "Authorized Uses by the Public" shall apply except that the Director may authorize Private Events or Exhibits and the exclusion of members of the public from attending Private Events and Exhibits. For the purpose of this subsection, the grant of a lease or a license is authorization to exclude members of the public from a Private Event or Exhibit. (10-3-12)T

iii. Section 302. "Hours and Locations of Use" shall apply as if the Idaho State Historical Properties were Capitol Mall Office Properties unless other hours of use or access restrictions are designated at the property, or posted on the Idaho State Historical Society website. (10-3-12)T

iv. Subsection 305.02. "Domestic Animals" shall apply unless a sign at the property specifies that domestic animals are not permitted. (10-3-12)T

**c.** The Idaho State Historical Society Properties set forth in Paragraph 101.01.a. of these rules may be licensed or leased and such license or lease may vary the provisions of these rules applicable to use of the property under this chapter, including but not limited to the following: hours of use; commercial use; Public Use; Private Events or Exhibits; consumption and distribution of alcohol; affixing of materials to the Idaho State Historical Society Properties; use of sound amplification; fireworks displays; and, use of utilities. (10-3-12)T

**102. MULTI-AGENCY FACILITIES.**

These rules shall apply to the following Multi-agency Facilities managed and administered by the Department. (10-3-12)T

**01. Lewiston State Office Building.** Lewiston State Office Building, 1118 F Street, Lewiston, Idaho 83501. (10-3-12)T

**02. Idaho Falls State Office Building.** Idaho Falls State Office Building, 150 Shoup Avenue, Idaho Falls, Idaho 83401. (10-3-12)T

**103. -- 199. (RESERVED)**

**200. USE OF STATE FACILITIES.**

**01. Authorized Uses by the Public.** Except as provided otherwise in these rules, the State Facilities are available for use by the public for the following: (10-3-12)T

**a.** Events. Events shall be held only in the locations and during the hours set forth in these rules. Events shall not exclude any member of the public from attending the Event. (10-3-12)T

**b.** Exhibits. Exhibits shall be held only in the locations and during the hours set forth in these rules. Exhibits shall not exclude any member of the public from attending the Exhibit. (10-3-12)T



- c. Public Use. (10-3-12)T
- 02. Prohibited Uses.** The following uses are prohibited at the State Facilities: (10-3-12)T
- a. Commercial Activity. The State Facilities shall not be used for any activity conducted for profit and no persons shall solicit to sell any merchandise or service at the State Facilities. The following are not commercial activity prohibited by this subsection: (10-3-12)T
- i. Meetings or conferences for public employees or their relatives describing employee benefits and approved by a state of Idaho agency. (10-3-12)T
- ii. Concessions authorized by law. (10-3-12)T
- iii. Vaccinations may be provided in exchange for a fee without the prior written permission of the Director where approved by a state of Idaho agency, board, commission or elected official. (10-3-12)T
- b. Camping. (10-3-12)T
- c. Private Events and Exhibits. (10-3-12)T
- 03. State Events and Exhibits.** State Events and Exhibits may occur in any portion of the State Facilities. The Director may waive all or a portion of these rules for a State Event or Exhibit. (10-3-12)T
- 04. Priority of Uses.** State Maintenance and Improvements shall have priority over all other use of the State Facilities. State Events and Exhibits shall have priority over public Events and Exhibits, and Public Use. (10-3-12)T

**201. EVENT AND EXHIBIT DURATION.**

The duration of an Event or Exhibit shall not exceed seven (7) consecutive days, including time for set-up and clean-up. An Event or Exhibit may continue to use the State Facilities after a seven (7) consecutive day period if the Event or Exhibit does not use the State Facilities for twenty-four (24) hours or more between each seven (7) consecutive day period. Events and Exhibits shall not continue beyond the hours for Event or Exhibit use of the State Facilities set forth in Section 302 of these rules. Exhibits must be removed at the earlier of the conclusion of the Event or the daily conclusion of the hours for Event and Exhibit use of the State Facilities. (10-3-12)T

**202. EQUIPMENT AND SUPPLIES.**

Except as provided in these rules, the Department will not provide equipment or supplies for use of the State Facilities. (10-3-12)T

**203. ESTABLISHMENT OF PERIMETERS.**

Security Personnel and law enforcement may establish perimeters separating participants in Exhibits and Events. Participants in and observers of any Event or Exhibit shall observe perimeters set pursuant to this section. (10-3-12)T

**204. AREA CLOSURES.**

The Director may direct that any portion of the State Facilities be closed for Events, Exhibits and Public Use upon a finding that the closed portion of the State Facilities has sustained damage or is in imminent danger of sustaining damage. The closure directive shall identify the portion of the State Facilities closed, the damage that has occurred or that will occur without closure, and the estimated period of closure to restore or prevent the damage. A notice of closure and information on how to obtain a copy of the closure directive shall be posted at the closed portion of the State Facilities. Circumstances presenting an imminent danger of damage to the State Facilities include, but are not limited to, the saturation of soil, turf, or landscaped areas with water, excessive foot traffic over landscaped areas, preventing turf or plants from obtaining adequate sunlight, and the buildup of ice or snow on landscaped areas. (10-3-12)T

**205. -- 299. (RESERVED)**

**300. RESTRICTIONS AND LIMITATIONS ON USE.**

The restrictions and limitations on use of the State Facilities set forth in Sections 301 through 399 of these rules shall apply to all Events, Exhibits, and Public Use of the State Facilities. (10-3-12)T

**301. USES INTERFERING WITH ACCESS OR USE OF FACILITY.**

**01. Interference with Primary Use of Facility or Real Property.** Events, Exhibits, and Public Use of the State Facilities shall not interfere with the primary use of the facility or real property adjoining the facility. The primary uses of the State Facilities include, but are not limited to, public meetings and hearings, court proceedings, and the conduct of public business by agencies or officials of the state of Idaho that normally occupy and use the affected facility or the real property adjoining the facility. (10-3-12)T

**02. Interference with Access.** Events, Exhibits and Public Use of the State Facilities shall not block fire hydrants, fire or emergency vehicle lanes, vehicular drives, pedestrian walkways, doorways, steps or similar access routes through, in or out of the State Facilities. (10-3-12)T

**302. HOURS AND LOCATIONS OF USE.**

The hours for Events and Exhibits at the State Facilities are as follows: (10-3-12)T

**01. Capitol Mall Office Properties and the Multi-Agency Facilities.** The hours of use of the Capitol Mall Office Properties and the Multi-Agency Facilities are 7 a.m. to 9 p.m. during the months of March through October and 7 a.m. to 6 p.m. during the months of November through February. (10-3-12)T

**02. Capitol Annex.** The hours of use of the Capitol Mall Annex are 7 a.m. to 9 p.m. during the months of March through October and 7 a.m. to 6 p.m. during the months of November through February. (10-3-12)T

**03. Parking Facilities.** The hours of use of the Parking Facilities shall be governed by IDAPA 38.04.04, "Capitol Mall Parking Rules." (10-3-12)T

**04. Maintenance and Improvements.** Notwithstanding the hours set forth in Subsections 302.01 and 302.02 of this section, Events, Exhibits and Public Use shall not interfere with State Maintenance and Improvements. The Department will publish the regular maintenance and improvement schedule at the website address set forth in Section 005 of these rules. The regular maintenance and improvement schedule may be modified due to weather, staffing, emergency repairs, equipment failures, funding changes, contract modifications, State Events and Exhibits or other causes arising after the schedule's publication. (10-3-12)T

**303. MOTORIZED VEHICLES.**

Motorized vehicles not owned or operated by the state of Idaho or law enforcement must remain on designated roadways and parking areas. Parking of motorized vehicles shall be governed by IDAPA 38.04.04, "Capitol Mall Parking Rules." Wheelchairs, motorized scooters, and other equipment providing individual mobility to the disabled are not motorized vehicles for the purposes of this section. (10-3-12)T

**304. BICYCLES, SKATES, SKATEBOARDS, SCOOTERS, AND OTHER NON-MOTORIZED TRANSPORTATION.**

Bicycles, skates, skateboards, and scooters may not be used at the State Facilities. Users of all other non-motorized transportation must remain on designated pathways during use. Where indicated by a posted notice or where requested by Security Personnel, law enforcement or a state employee or agent supervising a State Facility, users must store non-motorized transportation in a designated storage area on the exterior of a State Facility. Wheelchairs and other equipment providing individual mobility to the disabled are not non-motorized transportation for the purposes of this section. (10-3-12)T

**305. ANIMALS.**

The following shall apply to animals at the State Facilities: (10-3-12)T

**01. Wildlife.** Unless authorized by the Director no person shall: (10-3-12)T

**a.** Interfere with, hunt, molest, harm, frighten, kill, trap, chase, tease, annoy, shoot, or throw any object at a wild animal at the State Facilities. (10-3-12)T

**b.** No person shall feed, give, or offer food or any noxious substance to a wild animal at the State Facilities. (10-3-12)T

**02. Domestic Animals.** (10-3-12)T

**a.** Domestic animals are not allowed at the State Facilities unless leashed and under the control of the person bringing the animal to the State Facility. (10-3-12)T

**b.** The person bringing the animal to the State Facilities shall have in his possession the equipment necessary to remove the animal's fecal matter and shall immediately remove all fecal matter deposited by the animal. (10-3-12)T

**306. LANDSCAPING.**

Unless authorized by the Director, no person shall: (10-3-12)T

**01. Plants.** Damage, cut, carve, transplant or remove any plant, including but not limited to trees, at the State Facilities. (10-3-12)T

**02. Grass.** Dig in or otherwise damage grass areas at the State Facilities. (10-3-12)T

**03. Irrigation Equipment.** Interfere with, damage or remove irrigation equipment at the State Facilities. (10-3-12)T

**04. Landscaping Materials.** Move or alter landscaping materials at the State Facilities including, but not limited to, rock, edging materials, and bark or mulch. (10-3-12)T

**05. Climbing.** Climb or scale buildings, memorials, statues, trees, fences, or improvements at the State Facilities. (10-3-12)T

**307. FOOD AND BEVERAGES.**

Consumption of food and beverages at the State Facilities is subject to the following: (10-3-12)T

**01. Consumption May Be Prohibited.** The consumption of food and beverages may be prohibited by a notice posted at the entrance to all or a portion of the State Facilities. (10-3-12)T

**02. Alcohol.** Alcohol may not be consumed or distributed at the State Facilities. (10-3-12)T

**308. SMOKING.**

All persons shall observe the smoke free entrance notices and shall smoke only in designated exterior areas of the State Facilities. (10-3-12)T

**309. FIRES, CANDLES, AND FLAMES.**

No fires, candles, or other sources of open flame are permitted at the State Facilities. (10-3-12)T

**310. POSTERS, PLACARDS, BANNERS, SIGNS, EQUIPMENT, TABLES, MATERIALS, AND DISPLAYS.**

**01. Electrical Cords.** Electrical cords must be protected by cord covers or gaffers tape to prevent an electrical or trip hazard. (10-3-12)T

**02. Railings and Stairways.** No items may be placed on railings or stairways and no persons shall sit or stand on railings or stairways. (10-3-12)T

**03. Tossing or Dropping Items.** No items may be tossed or dropped over railings or from one level of a facility to another level or to the ground. (10-3-12)T

**04. Ingress or Egress.** No item, including tables, chairs, exhibits, equipment, materials, and displays shall be located so as to block ingress or egress to any portion of the State Facilities, or to restrict the follow of individuals using the facility, or to restrict emergency egress or ingress. (10-3-12)T

**05. Attaching, Affixing, Leaning, or Propping Materials.** Posters, placards, banners, signs, and displays, including any printed materials, shall not be affixed on any exterior surface of the State Facilities not designed for that purpose or on any permanent Commemorative Installation, post, railing, fence or landscaping, including trees. All posters, placards, banners, signs, and displays must be free-standing or supported by individuals. No items may be leaned or propped against any exterior surface of the State Facilities or embedded into the ground, including, but not limited to, placement of a stake, post or rod into the ground to support materials. (10-3-12)T

**06. Materials Causing Damage to Exterior Surface.** Stages, risers, chairs, tables, sound equipment, props, materials, displays, and similar items shall be constructed and used in a manner that will not damage, scratch, dent, dig or tear any surface at the State Facilities or any systems or utilities of the State Facilities including, but not limited to, fire suppression systems, storm drains, ventilation systems, and landscape watering systems. (10-3-12)T

**07. Free Distribution of Literature and Printed Material.** All literature and printed material must be distributed at no charge. The party distributing literature and printed material shall ensure periodically and at the conclusion of its use of the State Facilities that such material is not discarded outside of designated trash receptacles. (10-3-12)T

**08. Surface Markings.** Users shall not use any material to mark on any surface of the State Facilities including chalk, paint, pens, ink, or dye. (10-3-12)T

**311. ITEMS SUBJECT TO SEARCH.**

To enhance security and public safety, Security Personnel or law enforcement may inspect: (10-3-12)T

**01. Packages and Bags.** Packages, backpacks, purses, bags, and briefcases reasonably suspected of concealing stolen items or items prohibited by these rules. (10-3-12)T

**02. Items.** Items brought to the State Facilities, if there is a reasonable suspicion that an item may be capable of injuring, damaging or harming persons or property at the State Facilities. (10-3-12)T

**312. PROHIBITED ITEMS.**

The following, as defined in Title 18, Chapter 33, Idaho Code, are not permitted at the State Facilities: bombs, destructive devices, shrapnel, weapons of mass destruction, biological weapons, and chemical weapons. Security Personnel or law enforcement may direct that any person at the State Facilities immediately remove from the State Facilities any club, bat, or other item that can be used to injure, damage, or harm persons or property. (10-3-12)T

**313. SOUND LEVEL AND AMPLIFICATION.**

Sound amplification may not be used at the State Facilities. Sound levels, whether amplified or not, must not cause a disruption to the primary use of the State Facilities. Security Personnel, law enforcement or a state employee or agent supervising a State Facility may discontinue an Event or Exhibit or Public Use if they request that the sound level be reduced and those in attendance do not reduce the sound level. (10-3-12)T

**314. UTILITY SERVICE.**

Events, Exhibits, and the public may not use the utility services of the State Facilities other than restrooms; provided, however, the Director may authorize limited use of electrical service for the duration of an Event or Exhibit authorized by these rules. Utility services include, but are not limited to, electrical, sewage, water, heating, and geothermal services. The Director may terminate the use of utilities if such use interferes with the utility services of the State Facilities or the equipment or apparatus using utility service fails to comply with applicable rules or codes. (10-3-12)T

**315. LAW ENFORCEMENT AND FACILITY EXIGENCY.**

In case of a fire, bomb threat, utility malfunction, structural failure or other unforeseen emergency or threat endangering public safety or health, or endangering public property, law enforcement, Security Personnel and state employees or officials may direct all persons off of the State Facilities and delay or postpone any Event, Exhibit or

other activity until the emergency or threat is abated. (10-3-12)T

**316. COMPLIANCE WITH LAW.**

All use of the State Facilities shall comply with applicable law including, but not limited to, fire and safety codes. (10-3-12)T

**317. HEALTH, SAFETY, AND MAINTENANCE OF STATE FACILITIES.**

**01. Clean Condition After Use.** Users shall leave the State Facilities in reasonably clean condition after use, including depositing all trash in designated receptacles. (10-3-12)T

**02. Items Return to Proper Location.** Users shall return all items including, but not limited to, movable furniture and trash receptacles, to their location at the conclusion of the Event or Exhibit. (10-3-12)T

**03. Public Health.** No person shall excrete human waste at the State Facilities except in designated restroom facilities. For purposes of this section, excrete means the discharge of human waste from the body, including the acts of defecation and urination. For purposes of this section, human waste means human feces or human urine. (10-3-12)T

**04. Fireworks.** No person shall possess or use fireworks at the State Facilities. (10-3-12)T

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

**400. LIABILITY AND INDEMNIFICATION.**

**01. User Retains Liability.** Individuals, entities, and organizations using the State Facilities are responsible and liable for all suits, damages, claims or liabilities arising from use of the State Facilities. The state of Idaho shall have no liability for injury to private property, including posters, placards, banners, signs, equipment, tables, materials, and displays at the State Facilities. (10-3-12)T

**02. State Liability.** Nothing in these rules shall extend the liability of the state of Idaho beyond that provided in the Idaho Tort Claims Act, Title 6, Chapter 9, Idaho Code. (10-3-12)T

**03. Indemnification.** Any individual, entity, or organization permitted to use the State Facilities is deemed to agree to indemnify the state of Idaho from and against all claims, demands, actions, or causes of action, together with any and all losses, costs, or related expenses asserted by any group or persons for bodily injury or damage to property arising out of or in any way connected with the use of the State Facilities. (10-3-12)T

**04. No Endorsement.** Action or inaction of the Department shall not imply endorsement or approval by the state of Idaho of the actions, objectives or views of participants in an Event or Exhibit. (10-3-12)T

**401. -- 999. (RESERVED)**

**IDAPA 38 - DEPARTMENT OF ADMINISTRATION**

**38.04.07 - RULES GOVERNING USE OF THE INTERIOR OF STATE PROPERTY  
IN THE CAPITOL MALL AND OTHER STATE FACILITIES**

**DOCKET NO. 38-0407-1201**

**NOTICE OF RULEMAKING - RESCISSION OF TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the rescission of temporary rule is October 3, 2012.

**AUTHORITY:** In compliance with Section 67-5226, Idaho Code, notice is hereby given that this agency has rescinded the temporary rule previously adopted under this docket. The action is authorized pursuant to Section 67-5709, Idaho Code.

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

As directed by the 2012 Idaho Legislature, the Department established these temporary rules governing the use of state properties. The Department accepted and reviewed comments concerning these temporary rules. The Department is rescinding these temporary rules and issuing new temporary and proposed rules under a separate docket to avoid confusion. The new temporary and proposed rules incorporate many of the comments received on these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the rescission of this temporary rule, contact Teresa Luna, Director, at (208)332-1826.

DATED this 11th day of September, 2012.

Teresa Luna, Director  
Department of Administration  
650 W. State St.  
P. O. Box 83720  
Boise, ID 83720-0013  
Phone: (208) 332-1826  
Fax: (208) 334-2307

## **IDAPA 38 - DEPARTMENT OF ADMINISTRATION**

### **38.04.07 - RULES GOVERNING USE OF THE INTERIOR OF STATE PROPERTY IN THE CAPITOL MALL AND OTHER STATE FACILITIES**

**DOCKET NO. 38-0407-1202 (NEW CHAPTER)**

#### **NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is October 3, 2012.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 67-5709, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

These rules set forth how state properties may be used for purposes other than the conduct of public business. The rules establish the allowed uses and set parameters of use to ensure the safety of persons and property. These rules replace temporary rules issued in the spring of 2012. These rules incorporate many of the comments received in response to the original temporary rules.

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

Section 67-5709, Idaho Code, directs that the Department issue rules within thirty (30) days of the enactment of revisions in the 2012 legislative session. These rules incorporate changes arising from public comment on temporary rules issued in response to the Legislature's direction.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 these rules incorporate public comment submitted on the original temporary rules and because further consensus between interested parties on the content of the rules is improbable.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Teresa Luna, Director, at (208)332-1826.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 11th day of September, 2012.

Teresa Luna, Director  
Department of Administration  
650 W. State St.  
P. O. Box 83720  
Boise, ID 83720-0013  
Phone: (208) 332-1826  
Fax: (208) 334-2307

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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 38-0407-1202**

**IDAPA 38  
TITLE 04  
CHAPTER 07**

**38.04.07 - RULES GOVERNING USE OF THE INTERIOR OF STATE PROPERTY  
IN THE CAPITOL MALL AND OTHER STATE FACILITIES**

**000. LEGAL AUTHORITY.**

Section 67-5709, Idaho Code, gives the Director of the Department of Administration authority to promulgate rules governing the State Properties in the Capitol Mall and other state facilities. (10-3-12)T

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited as IDAPA 38.04.07, "Rules Governing Use of the Interior of State Property in the Capitol Mall and Other State Facilities." (10-3-12)T

**02. Scope.** These rules contain the provisions for use of the interior of the Capitol Mall Office Properties, the Capitol Annex, the Parking Facilities, the Other State Properties, and the Multi-agency Facilities. The interiors of such facilities occupied by a tenant under lease may be subject to additional requirements imposed by the tenant. Rules governing the exterior of the Capitol Mall Properties, the Other State Properties, and the Multi-agency Facilities are codified under IDAPA 38.04.06, "Rules Governing Use of the Exterior of State Property in the Capitol Mall and Other State Facilities." Rules governing the use of the exterior of the Idaho State Capitol are codified under IDAPA 38.04.08, "Rules Governing Use of Idaho State Capitol Exterior." Rules governing parking are codified under IDAPA 38.04.04, "Capitol Mall Parking Rules." (10-3-12)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 cost at the Department's office. (10-3-12)T

**003. ADMINISTRATIVE APPEALS.**

These rules do not provide for appeals of the requirements for use of the Interior State Facilities. (10-3-12)T

**004. INCORPORATION BY REFERENCE.**

There are no documents that have been incorporated by reference into these rules. (10-3-12)T

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



**01. Office Hours.** The Department is open from 8 a.m. to 5 p.m. except Saturday, Sunday, and legal holidays. (10-3-12)T

**02. Mailing Address.** The Department's mailing address is P.O. Box 83720, Boise, Idaho 83720-0013. (10-3-12)T

**03. Street Address.** The Department's principal place of business is located at 650 West State Street, Boise, Idaho 83702-5972. (10-3-12)T

**04. Website Address.** The Department's website address is <http://adm.idaho.gov/>. (10-3-12)T

**006. PUBLIC RECORDS ACT COMPLIANCE.**

All records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (10-3-12)T

**007. SEVERABILITY.**

Pursuant to IDAPA 44.01.01, "Rules of the Office of the Administrative Rules Coordinator," all administrative rules in Idaho are presumed severable unless specifically provided to the contrary. If any rule, or part thereof, or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of any remaining portion. (10-3-12)T

**008. -- 009. (RESERVED)**

**010. DEFINITIONS.**

**01. Camping.** Any activity prohibited under Section 67-1613, Idaho Code. (10-3-12)T

**02. Capitol Annex.** The interior of improvements located at 514 West Jefferson Street, Boise, Idaho. (10-3-12)T

**03. Capitol Mall Office Properties.** The interior of improvements set forth in Section 67-5709(2)(a) and (b), Idaho Code. The Capitol Mall Office Properties do not include the Idaho State Capitol or its grounds or the Capitol Mall Annex. (10-3-12)T

**04. Common Space.** The portion of the Interior State Facility that is not Tenant Space. Common Space includes but is not limited to interior lobbies not within Tennant Space and restrooms not accessed through Tennant Space. Common Space does not include Tenant Space or any area marked "private," "no admission," "staff only" or similarly designated as not open to the public. (10-3-12)T

**05. Department.** The Department of Administration. (10-3-12)T

**06. Director.** The Director of the Department of Administration or his designee. (10-3-12)T

**07. Interior State Facilities.** The interior spaces within the Capitol Mall Office Properties, the Capitol Annex, the Parking Facilities, the Multi-agency Facilities, and the Other State Properties. (10-3-12)T

**08. Multi-Agency Facilities.** The interior of buildings and improvements set forth in Section 102 of these rules. (10-3-12)T

**09. Other State Properties.** The interior of buildings and improvements set forth in Section 101 of these rules. (10-3-12)T

**10. Parking Facilities.** The interior of improvements set forth in Section 67-5709(2)(b), Idaho Code. (10-3-12)T

**11. Security Personnel.** A state of Idaho employee or a staff member of a state of Idaho contractor

whose job duties include monitoring compliance with and enforcing these rules. (10-3-12)T

**12. State Business Day.** Monday through Friday, excluding the holidays set forth in Section 73-108, Idaho Code. (10-3-12)T

**13. Tenant Space.** The portion of the Interior State Facilities occupied by a state of Idaho officer, official, agency, board or commission or leased to a public agency or a private individual or entity. (10-3-12)T

**011. -- 100. (RESERVED)**

**101. OTHER STATE PROPERTIES.**

These rules shall apply to the following Other State Properties pursuant to the request of the state of Idaho public entity owning or controlling the property: (10-3-12)T

**01. Idaho State Historical Society Properties.** (10-3-12)T

**a.** The interior of the following properties owned or operated by the Idaho State Historical Society shall be Other Properties under these rules: (10-3-12)T

i. Idaho State Historical Museum, located at 610 North Julia Davis Drive, Boise, Idaho. (10-3-12)T

ii. Old U.S. Assay Office, located at 210 Main Street, Boise, Idaho. (10-3-12)T

iii. Old Penitentiary site located in Boise, Idaho and defined in Section 58-337, Idaho Code. (10-3-12)T

iv. Idaho History Center, located at 2205 Old Penitentiary Road, Boise, Idaho. (10-3-12)T

v. Franklin Historic Properties, located in Franklin, Idaho. The Franklin Historic Properties include the Franklin Co-operative Mercantile Institution Building, the Hatch House, the Doney House, and the Relic Hall. (10-3-12)T

vi. Pierce Courthouse, located in Pierce, Idaho. (10-3-12)T

vii. Rock Creek Station and Stricker Homesite, located at 3715 Stricker Cabin Road, Hansen, Idaho. (10-3-12)T

**b.** The following sections of these rules shall apply to the Idaho State Historical Society Properties set forth in Paragraph 101.01.a. of these rules only as modified by this Paragraph 101.01.b.: (10-3-12)T

i. Subsection 010.04. "Director" shall mean the Executive Director of the Idaho State Historical Society when these rules are applied to the Idaho State Historical Society Properties. (10-3-12)T

ii. Subsection 200.01. "Authorized Uses by the Public" shall apply except that the Director may authorize public or private uses of the interior of the Idaho Historical Society Properties and the exclusion of members of the public from attending such events. For the purpose of this subsection, the grant of a lease or a license is authorization to exclude members of the public from the interior of the Idaho Historical Society Properties. (10-3-12)T

iii. Section 302. "Hours and Locations of Use" shall apply as if the Idaho State Historical Properties were Capitol Mall Office Properties unless other hours of use or access restrictions are designated at the property, or posted on the Idaho State Historical Society website. (10-3-12)T

**c.** The Idaho State Historical Society Properties set forth in Paragraph 101.01.a. of these rules may be licensed or leased and such license or lease may vary the provisions of these rules applicable to use of the property under this chapter, including but not limited to the following: hours of use; authorized uses; consumption and distribution of alcohol; affixing of materials to the Idaho State Historical Society Properties; use of sound

amplification; and, use of utilities. (10-3-12)T

**102. MULTI-AGENCY FACILITIES.**

These rules shall apply to the following Multi-agency Facilities managed and administered by the Department: (10-3-12)T

**01. Lewiston State Office Building.** Lewiston State Office Building, 1118 F Street, Lewiston, Idaho 83501. (10-3-12)T

**02. Idaho Falls State Office Building.** Idaho Falls State Office Building, 150 Shoup Avenue, Idaho Falls, Idaho 83401. (10-3-12)T

**103. -- 199. (RESERVED)**

**200. USE OF INTERIOR STATE FACILITIES.**

**01. Authorized Uses by the Public.** Public access to the Interior State Facilities is limited to the conduct of business with a tenant. Public access to the Tenant Space is limited to the conduct of business with the tenant. (10-3-12)T

**02. Prohibited Uses.** The following uses are prohibited at the Interior State Facilities: (10-3-12)T

**a. Events.** The Interior State Facilities shall not be used by the public for press conferences, performances, ceremonies, presentations, meetings, rallies, receptions or gatherings. (10-3-12)T

**b. Exhibits.** The Interior State Facilities shall not be used by the public for attended or unattended displays, including but not limited to equipment, machines, vehicles, products, samples, paintings, sculptures, arts and crafts, photographs, signs, banners or other graphic displays. (10-3-12)T

**c. Commercial Activity.** The Common Space shall not be used for any activity conducted for profit and no persons shall solicit to sell any merchandise or service in the Common Space. (10-3-12)T

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

**300. RESTRICTIONS AND LIMITATIONS ON USE.**

Except as otherwise provided, the restrictions and limitations on use of the Interior State Facilities set forth in Sections 301 through 399 of these rules shall apply to all use of the Interior State Facilities. (10-3-12)T

**301. USES INTERFERING WITH ACCESS OR USE OF FACILITY.**

**01. Interference With Primary Use of Facility or Real Property.** No person shall interfere with the primary use of the Interior State Facilities. The primary uses of the Interior State Facilities include but are not limited to public meetings and hearings, court proceedings, and the conduct of public business by agencies or officials of the state of Idaho that normally occupy and use Interior State Facilities and the conduct of business by a tenant of a state facility. (10-3-12)T

**02. Interference With Access.** No person shall block fire hydrants, fire or emergency vehicle lanes, vehicular drives, pedestrian walkways, doorways, steps or similar access routes through, in or out of the Interior State Facilities. (10-3-12)T

**302. HOURS AND LOCATIONS OF USE.**

**01. Capitol Mall Office Properties and Multi-Agency Facilities.** The hours for public access to the interior of the Capitol Mall Office Properties and the Multi-agency Facilities are 8 a.m. to 5 p.m. on State Business Days. (10-3-12)T

**02. Capitol Annex.** The Capitol Annex is closed to public access. (10-3-12)T

**03. Parking Facilities.** The hours of use of the Parking Facilities shall be governed by IDAPA 38.04.04, "Capitol Mall Parking Rules." (10-3-12)T

**303. BICYCLES, SKATES, SKATEBOARDS, SCOOTERS, AND OTHER NON-MOTORIZED TRANSPORTATION.**

Bicycles, skates, skateboards, scooters, and other non-motorized transportation may not be used in the Interior State Facilities. Where indicated by a posted notice or where requested by Security Personnel, law enforcement or a state employee or agent supervising a state facility, users must store non-motorized transportation in a designated storage area on the exterior of a state facility. Child strollers and wheelchairs and other equipment providing individual mobility to the disabled are not non-motorized transportation for the purposes of this section. (10-3-12)T

**304. ANIMALS.**

Animals are not allowed at the Interior State Facilities unless the animal is a service animal necessary to assist persons with disabilities or an animal in the service of law enforcement. Service animals must be leashed and under the control of the person bringing the animal to the Interior State Facilities. The person bringing the animal to the Interior State Facilities shall have in his possession the equipment necessary to remove the animal's urine and fecal matter and shall immediately remove all urine and fecal matter deposited by the animal. (10-3-12)T

**305. FOOD AND BEVERAGES.**

Consumption of food and beverages at the Interior State Facilities is subject to the following: (10-3-12)T

**01. Consumption May Be Prohibited.** The consumption of food and beverages may be prohibited by a notice posted at the entrance to all or a portion of the Interior State Facilities. (10-3-12)T

**02. Alcohol.** Alcohol may not be consumed or distributed in the Common Space. (10-3-12)T

**306. SMOKING.**

Smoking is not allowed in the Interior State Facilities. (10-3-12)T

**307. FIRES, CANDLES, AND FLAMES.**

No fires, candles or other sources of open flame are permitted in the Interior State Facilities. (10-3-12)T

**308. LIMITS ON USE OF COMMON SPACE.**

The following provisions apply to the Common Space. (10-3-12)T

**01. Electrical Cords.** Electrical cords must be protected by cord covers or gaffers tape to prevent an electrical or trip hazard. (10-3-12)T

**02. Railings and Stairways.** No items may be placed on railings or stairways and no persons shall sit or stand on railings or stairways. (10-3-12)T

**03. Tossing or Dropping Items.** No items may be tossed or dropped over railings or from one level of a facility to another level or to the ground. (10-3-12)T

**04. Ingress or Egress.** No item, including tables, chairs, exhibits, equipment, materials, and displays shall be located so as to block ingress or egress to any portion of the Interior State Facilities, or to restrict the follow of individuals using the facility, or to restrict emergency egress or ingress. (10-3-12)T

**05. Attaching, Affixing, Leaning or Propping Materials.** Posters, placards, banners, signs, and displays, including any printed materials, shall not be affixed on any interior surface of the Common Space not designed for that purpose. No items may be leaned or propped against any interior surface of the Common Space. (10-3-12)T

**06. Materials Causing Damage to Interior Surface.** Stages, risers, chairs, tables, sound equipment, props, materials, displays, and similar items shall be constructed and used in a manner that will not damage, scratch, dent, dig or tear any surface in the Common Space or any systems or utilities of the Interior State Facilities, including

but not limited to fire suppression systems, drains, ventilation systems, and lighting systems. (10-3-12)T

**309. ITEMS SUBJECT TO SEARCH.**

To enhance security and public safety, Security Personnel and law enforcement may inspect: (10-3-12)T

**01. Packages and Bags.** Packages, backpacks, purses, bags, and briefcases reasonably suspected of concealing stolen items or items prohibited by these rules. (10-3-12)T

**02. Items.** Items brought to the Interior State Facilities, if there is a reasonable suspicion that an item may be capable of injuring, damaging or harming persons or property at the Interior State Facilities. (10-3-12)T

**310. PROHIBITED ITEMS.**

The following, as defined in Title 18, Chapter 33, Idaho Code, are not permitted at the State Facilities; bombs, destructive devices, shrapnel, weapons of mass destruction, biological weapons, and chemical weapons. Security Personnel or law enforcement may direct that any person at the State Facilities immediately remove from the State Facilities any club, bat or other item that can be used to injure, damage, or harm persons or property at the Interior State Facilities. (10-3-12)T

**311. UTILITY SERVICE.**

The public may not use the utility services of the Interior State Facilities except restrooms. (10-3-12)T

**312. LAW ENFORCEMENT AND FACILITY EXIGENCY.**

In case of a fire, bomb threat, utility malfunction, structural failure or other unforeseen emergency or threat endangering public safety or health, or endangering public property, law enforcement, Security Personnel and state employees or officials may direct all persons out of the Interior State Facilities and delay or postpone any activity until the emergency or threat is abated. (10-3-12)T

**313. COMPLIANCE WITH LAW.**

All use of the Interior State Facilities shall comply with applicable law, including but not limited to fire and safety codes. (10-3-12)T

**314. MAINTENANCE OF INTERIOR STATE FACILITIES.**

**01. Clean Condition After Use.** Users shall leave the Interior State Facilities in reasonably clean condition after use, including depositing all trash in designated receptacles. (10-3-12)T

**02. Items Return to Proper Location.** Users shall return all items, including but not limited to movable furniture and trash receptacles to their location at the conclusion of use. (10-3-12)T

**315. -- 999. (RESERVED)**

**IDAPA 38 - DEPARTMENT OF ADMINISTRATION**  
**38.04.08 - RULES GOVERNING USE OF IDAHO STATE CAPITOL EXTERIOR**  
**DOCKET NO. 38-0408-1201**  
**NOTICE OF RULEMAKING - RESCISSION OF TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the rescission of temporary rule is October 3, 2012.

**AUTHORITY:** In compliance with Section 67-5226, Idaho Code, notice is hereby given that this agency has rescinded the temporary rule previously adopted under this docket. The action is authorized pursuant to Sections 67-1604 and 67-5709, Idaho Code.

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

As directed by the 2012 Idaho Legislature, the Department established these temporary rules governing the use of state properties. The Department accepted and reviewed comments concerning these temporary rules. The Department is rescinding these temporary rules and issuing new temporary and proposed rules under a separate docket to avoid confusion. The new temporary and proposed rules incorporate many of the comments received on these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the rescission of this temporary rule, contact Teresa Luna, Director, at (208)332-1826.

DATED this 10th day of September, 2012.

Teresa Luna, Director  
Department of Administration  
650 W. State St.  
P. O. Box 83720  
Boise, ID 83720-0013  
Phone: (208) 332-1827  
Fax: (208) 334-2307

**IDAPA 38 - DEPARTMENT OF ADMINISTRATION**  
**38.04.08 - RULES GOVERNING USE OF IDAHO STATE CAPITOL EXTERIOR**  
**DOCKET NO. 38-0408-1202 (NEW CHAPTER)**  
**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is October 3, 2012.

**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 67-1604 and 67-5709, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

These rules set forth how state properties may be used for purposes other than the conduct of public business. The rules establish the allowed uses and set parameters of use to ensure the safety of persons and property. These rules replace temporary rules issued in the spring of 2012. These rules incorporate many of the comments received in response to the original temporary rules.

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

Section 67-5709, Idaho Code, directs that the Department issue rules within thirty (30) days of the enactment of revisions in the 2012 legislative session. These rules incorporate changes arising from public comment on temporary rules issued in response to the Legislature's direction.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 these rules incorporate public comment submitted on the original temporary rules and because further consensus between interested parties on the content of the rules is improbable.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Teresa Luna, Director, at (208)332-1826.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 10th day of September, 2012.

Teresa Luna, Director  
Department of Administration  
650 W. State St.  
P. O. Box 83720  
Boise, ID 83720-0013  
Phone: (208) 332-1826  
Fax: (208) 334-2307

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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 38-0408-1202**

**IDAPA 38**  
**TITLE 04**  
**CHAPTER 08**

**38.04.08 - RULES GOVERNING USE OF IDAHO STATE CAPITOL EXTERIOR**

**000. LEGAL AUTHORITY.**

Section 67-1604, Idaho Code, gives the Director of the Department of Administration authority to promulgate rules governing access to and use by the public of the capitol building and its grounds. Section 67-5709, Idaho Code, gives the Director authority to promulgate rules governing certain public facilities. (10-3-12)T

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited as IDAPA 38.04.08, "Rules Governing Use of Idaho State Capitol Exterior." (10-3-12)T

**02. Scope.** These rules contain the provisions for use of the exterior of the Idaho State Capitol. Rules governing the exterior of the other state facilities are codified under IDAPA 38.04.06, "Rules Governing Use of the Exterior of State Property in the Capitol Mall and Other State Facilities." Rules governing the interior of the Capitol Mall properties, other state properties, and the multi-agency facilities are codified under IDAPA 38.04.07, "Rules Governing Use of Interior State Property in the Capitol Mall and Other State Facilities." Rules governing parking are codified under IDAPA 38.04.04, "Capitol Mall Parking Rules." (10-3-12)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 cost at the Department's office. (10-3-12)T

**003. ADMINISTRATIVE APPEALS.**

These rules provide for appeals of the denial of a Permit under Section 403 of these rules. (10-3-12)T

**004. INCORPORATION BY REFERENCE.**

There are no documents that have been incorporated by reference into these rules. (10-3-12)T

**005. OFFICE – OFFICE HOURS – MAILING AND STREET ADDRESS.**

**01. Office Hours.** The Department is open from 8 a.m. to 5 p.m. except Saturday, Sunday, and legal



holidays. (10-3-12)T

**02. Mailing Address.** The Department's mailing address is P.O. Box 83720, Boise, Idaho 83720-0013. (10-3-12)T

**03. Street Address.** The Department's principal place of business is located at 650 West State Street, Boise, Idaho 83702-5972. (10-3-12)T

**04. Website Address.** The Department's website address is <http://adm.idaho.gov/>. (10-3-12)T

**006. PUBLIC RECORDS ACT COMPLIANCE.**

All records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (10-3-12)T

**007. SEVERABILITY.**

Pursuant to IDAPA 44.01.01, "Rules of the Administrative Rules Coordinator," all administrative rules in Idaho are presumed severable unless specifically provided to the contrary. If any rule, or part thereof, or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of any remaining portion. (10-3-12)T

**008. -- 009. (RESERVED)**

**010. DEFINITIONS.**

**01. Camping.** Any activity prohibited under Section 67-1613, Idaho Code. (10-3-12)T

**02. Commemorative Installation.** Any statue, monument, sculpture, memorial or landscape feature designed to recognize a person, group, event or element of history. (10-3-12)T

**03. Department.** The Department of Administration. (10-3-12)T

**04. Director.** The Director of the Department of Administration or his designee. (10-3-12)T

**05. Event.** Any press conference, performance, ceremony, presentation, meeting, rally, reception, demonstration, protest, educational tour or gathering of people held on the State Capitol Exterior. As used in this definition, a rally is a gathering of two (2) or more people. (10-3-12)T

**06. Exhibit.** Any temporary Commemorative Installation and any attended or unattended display including, but not limited to, equipment, machines, vehicles, products, samples, paintings, sculptures, arts and crafts, photographs, signs, banners or other graphic displays. (10-3-12)T

**07. Jefferson Steps.** The building entrance at the second floor of the State Capitol, the steps extending from the entrance, and the hard surface extending between the steps and the public sidewalk along Jefferson Street. (10-3-12)T

**08. Permit.** A written authorization issued by the Director allowing use of the State Capitol Exterior as set forth in the Permit. A Permit serves as a reservation to use a portion of the State Capitol Exterior with the priority for use set forth in Subsection 200.04 of these rules. (10-3-12)T

**09. Private Event or Private Exhibit.** Any activity sponsored or initiated by a member of the public that is open only to invited or qualifying individuals or groups. Private Events and Private Exhibits include, but are not limited to, weddings, dinners, award ceremonies, memorials, and seminars. (10-3-12)T

**10. Public Use.** Use that is not an Event, Private Event, Exhibit, Private Exhibit or use by a public officer, official, employee, contractor, agency, board or commission for state of Idaho business. Public Use includes, but is not limited to, the following: (10-3-12)T

- a.** The transit of individuals through the State Capitol Exterior unrelated to an Event or Exhibit; (10-3-12)T
- b.** Incidental, short-term recreational use of the State Capitol Exterior unrelated to an Event or Exhibit; and (10-3-12)T
- c.** The conduct of public business with any state of Idaho agency, board, commission, officer or elected official acting on behalf of the state of Idaho. (10-3-12)T
- 11. Security Personnel.** A state of Idaho employee or a staff member of a state of Idaho contractor whose job duties include monitoring compliance with and enforcing these rules. (10-3-12)T
- 12. State Business Day.** Monday through Friday, excluding the holidays set forth in Section 73-108, Idaho Code. (10-3-12)T
- 13. State Capitol Exterior.** The exterior of the Idaho State Capitol, the real property, the grounds, and the improvements on the exterior of the Idaho State Capitol or its grounds, all of which is located at capitol square as identified on the Boise City original townsite plat filed in the Ada County Recorder's office in book 1 on page 1. The State Capitol Exterior is bounded by the following streets: State Street, Sixth Street, Jefferson Street, and Eighth Street. (10-3-12)T
- 14. State Events and Exhibits.** All functions initiated and controlled by any state of Idaho agency, board, commission, officer or elected official acting on behalf of the state of Idaho. (10-3-12)T
- 15. State Maintenance and Improvements.** Maintenance or improvement of the State Capitol Exterior by the state of Idaho or its contractors. Maintenance for the purpose of this definition includes, but is not limited to, grounds maintenance such as mowing, watering, landscaping, aerating, resodding, fertilizing and planting, and structural maintenance such as pressure washing, painting, window cleaning and re-glazing. Improvement for the purpose of this definition includes, but is not limited to, the following: construction of new buildings or portions of buildings; renovations to existing buildings; the installation of permanent structures and equipment such as benches, sprinklers, flagpoles, monuments and memorials; and, the installation of temporary equipment and structures such as construction fencing, generators and portable buildings. (10-3-12)T
- 011. -- 199. (RESERVED)**
- 200. USE OF STATE CAPITOL EXTERIOR.**
- 01. Authorized Uses by the Public.** Except as provided otherwise in these rules, the State Capitol Exterior is available for use by the public for the following: (10-3-12)T
- a.** Events. Events shall be held only in the locations and during the hours set forth in these rules. Events shall not exclude any member of the public from attending the Event. (10-3-12)T
- b.** Exhibits. Exhibits shall be held only in the locations and during the hours set forth in these rules. Exhibits shall not exclude any member of the public from attending the Exhibit. (10-3-12)T
- c.** Public Use. (10-3-12)T
- 02. Prohibited Uses.** The following uses are prohibited in the State Capitol Exterior: (10-3-12)T
- a.** Commercial Activity. The State Capitol Exterior shall not be used for any activity conducted for profit and no persons shall solicit to sell any merchandise or service on the State Capitol Exterior. (10-3-12)T
- b.** Camping. (10-3-12)T
- c.** Private Events and Private Exhibits. (10-3-12)T

**03. State Events and Exhibits.** State Events and Exhibits may occur in any portion of the State Capitol Exterior. The Director may waive all or a portion of these rules for a State Event or Exhibit. (10-3-12)T

**04. Priority of Uses.** State Maintenance and Improvements shall have priority over all other use of the State Capitol Exterior. State Events and Exhibits shall have priority over public Events and Exhibits, and Public Use. Events and Exhibits held under a Permit shall have priority over other public Events and Exhibits and Public Use. (10-3-12)T

**201. EVENT AND EXHIBIT DURATION.**

The duration of an Event or Exhibit on the State Capitol Exterior, including time for set-up and clean-up, shall not exceed seven (7) consecutive days. An Event or Exhibit may continue to use the State Capitol Exterior after a seven (7) consecutive day period if the Event or Exhibit does not use the State Capitol Exterior for twenty-four (24) hours or more between each seven (7) consecutive day period. Events and Exhibits shall not continue beyond the hours for Event or Exhibit use of the State Capitol Exterior set forth in Section 302 of these rules. Exhibits must be removed at the earlier of the conclusion of the Event or the daily conclusion of the hours for Event and Exhibit use of the State Capitol Exterior. (10-3-12)T

**202. EQUIPMENT AND SUPPLIES.**

Except as provided in these rules, the Department will not provide equipment or supplies for use on the State Capitol Exterior. Where requested in a Permit application for use of the Jefferson Street Steps, the Department may provide a podium and a public address system. (10-3-12)T

**203. ESTABLISHMENT OF PERIMETERS.**

Security personnel and law enforcement may establish perimeters separating participants in Exhibits and Events. Participants in and observers of any Event or Exhibit shall observe perimeters set pursuant to this section. (10-3-12)T

**204. AREA CLOSURES.**

The Director may direct that any portion of the State Capitol Exterior be closed for Events, Exhibits and Public Use upon a finding that the closed portion of the State Capitol Exterior has sustained damage or is in imminent danger of sustaining damage. The closure directive shall identify the portion of the State Capitol Exterior closed, the damage that has occurred or that will occur without closure, and the estimated period of closure to restore or prevent the damage. A notice of closure and information on how to obtain a copy of the closure directive shall be posted at the closed portion of the State Capitol Exterior. Circumstances presenting an imminent danger of damage to the State Capitol Exterior include, but are not limited to, the saturation of soil, turf, or landscaped areas with water, excessive foot traffic over landscaped areas, preventing turf or plants from obtaining adequate sunlight, and the buildup of ice or snow on landscaped areas. (10-3-12)T

**205. -- 299. (RESERVED)**

**300. RESTRICTIONS AND LIMITATIONS ON USE.**

The restrictions and limitations on use of the State Capitol Exterior set forth in Sections 301 through 399 of these rules shall apply to all Events, Exhibits, and Public Use of the State Capitol Exterior. (10-3-12)T

**301. USES INTERFERING WITH ACCESS OR USE OF FACILITY.**

**01. Interference With Primary Use of State Capitol Exterior.** Events, Exhibits, and Public Use of the State Capitol Exterior shall not interfere with the primary use of the Idaho State Capitol or the adjacent real property and improvements. The primary use of the Idaho State Capitol includes, but is not limited to, the conduct of public business by agencies or officials of the state of Idaho that normally occupy and use the Idaho State Capitol or the State Capitol Exterior. (10-3-12)T

**02. Interference With Access.** Events, Exhibits, and Public Use of the State Capitol Exterior shall not block fire hydrants, fire or emergency vehicle lanes, vehicular drives, pedestrian walkways, doorways, steps or similar access routes through, in or out of the State Capitol Exterior. (10-3-12)T

**302. HOURS AND LOCATIONS OF USE.**

**01. Hours.** The hours for Events and Exhibits on the State Capitol Exterior are as follows: (10-3-12)T

**a. General Hours.** The general hours for Events and Exhibits are 7 a.m. to 9 p.m. during the months of March through October and 7 a.m. to 6 p.m. during the months of November through February. (10-3-12)T

**b. Legislative Sessions.** When either house of the legislature or a legislative committee is in session prior to or following general hours for an Event or Exhibit, the State Capitol Exterior will be open for an Event or Exhibit thirty (30) minutes before commencement of the session and closed thirty (30) minutes after adjournment of the legislative body conducting business. (10-3-12)T

**c. Public Events in the State Capitol.** When any Event is publicly scheduled in the interior of the Idaho State Capitol outside the general hours for an Event or Exhibit, the State Capitol Exterior will be open for an Event or Exhibit thirty (30) minutes before commencement of the Event and closed thirty (30) minutes after the published time for the conclusion of the Event. (10-3-12)T

**d. Jefferson Street Steps.** The hours for Events and Exhibits at the Jefferson Street Steps are 6 a.m. to 11:59 p.m. Events and Exhibits shall not occur on the Jefferson Street Steps between the hours of 12 a.m. and 5:59 a.m. (10-3-12)T

**e. Notwithstanding the hours set forth in Paragraphs 302.01.a., 302.01.b., 302.01.c., and 302.01.d. of this section, Events and Exhibits shall not interfere with State Maintenance and Improvements. The Department will publish the regular maintenance and improvement schedule at the website address set forth in Section 005 of these rules. The regular maintenance and improvement schedule may be modified due to weather, staffing, emergency repairs, equipment failures, funding changes, contract modifications, State Events and Exhibits or other causes arising after the schedule's publication. (10-3-12)T**

**02. Locations.** In addition to limitations on the interference with access set forth in Section 301 of these rules and compliance with all fire and safety codes, all Events, Exhibits and Public Use on the State Capitol Exterior shall be on the Jefferson Street Steps or on hard surfaces, including concrete and granite, on the State Capitol Exterior, and shall be at least fifteen (15) feet from the exterior walls and windows of the Idaho State Capitol. Events or Exhibits may use the Jefferson Street Stairs for podiums, equipment, standing, and seating, subject to compliance with fire and safety codes. No persons shall place items on, sit or stand on stairways other than the Jefferson Street Steps. (10-3-12)T

**303. MOTORIZED VEHICLES.**

Motorized vehicles not owned or operated by the state of Idaho or law enforcement must remain on designated roadways and parking areas. Parking of motorized vehicles shall be governed by IDAPA 38.04.04, "Capitol Mall Parking Rules." Wheelchairs, motorized scooters, and other equipment providing individual mobility to the disabled are not motorized vehicles for the purposes of this section. (10-3-12)T

**304. BICYCLES, SKATES, SKATEBOARDS, SCOOTERS, AND OTHER NON-MOTORIZED TRANSPORTATION.**

Bicycles, skates, skateboards, and scooters may not be used on the State Capitol Exterior. Users of all other non-motorized transportation must remain on designated pathways during use. Where indicated by a posted notice or where requested by Security Personnel, law enforcement or a state employee or agent supervising the State Capitol Exterior, users must store non-motorized transportation in a designated storage area on the State Capitol Exterior. Wheelchairs and other equipment providing individual mobility to the disabled are not non-motorized transportation for the purposes of this section. (10-3-12)T

**305. ANIMALS.**

The following shall apply to animals on the State Capitol Exterior: (10-3-12)T

**01. Wildlife.** Unless authorized by the Director no person shall: (10-3-12)T

**a. Interfere with, hunt, molest, harm, frighten, kill, trap, chase, tease, annoy, shoot or throw any object at a wild animal on the State Capitol Exterior. (10-3-12)T**

**b.** No person shall feed, give or offer food or any noxious substance to a wild animal on the State Capitol Exterior. (10-3-12)T

**02. Domestic Animals.** (10-3-12)T

**a.** Domestic animals are not allowed on the State Capitol Exterior unless leashed and under the control of the person bringing the animal to the State Capitol Exterior. (10-3-12)T

**b.** The person bringing the animal to the State Capitol Exterior shall have in his possession the equipment necessary to remove the animal's fecal matter and shall immediately remove all fecal matter deposited by the animal. (10-3-12)T

**306. LANDSCAPING.**

No person other than state employees or contractors designated by the Director shall: (10-3-12)T

**01. Plants.** Damage, cut, carve, transplant or remove any plant including, but not limited to, trees, on the State Capitol Exterior. (10-3-12)T

**02. Grass.** Dig in or otherwise damage grass areas on the State Capitol Exterior. (10-3-12)T

**03. Irrigation Equipment.** Interfere with, damage or remove irrigation equipment on the State Capitol Exterior. (10-3-12)T

**04. Landscaping Materials.** Move or alter landscaping materials on the State Capitol Exterior including, but not limited to, rock, edging materials, and bark or mulch. (10-3-12)T

**05. Climbing.** Climb or scale buildings, Commemorative Installations, trees, fences, posts or other improvements on the State Capitol Exterior. (10-3-12)T

**307. FOOD AND BEVERAGES.**

Consumption of food and beverages on the State Capitol Exterior is subject to the following: (10-3-12)T

**01. Consumption May Be Prohibited.** The consumption of food and beverages may be prohibited by a notice posted at the entrance to all or a portion of the State Capitol Exterior. (10-3-12)T

**02. Alcohol.** Alcohol may not be consumed or distributed on the State Capitol Exterior. (10-3-12)T

**308. SMOKING.**

All persons shall observe the smoke free entrance notices and shall smoke only in designated areas of the State Capitol Exterior. (10-3-12)T

**309. FIRES, CANDLES, AND FLAMES.**

No fires, candles or other sources of open flame are permitted on the State Capitol Exterior. (10-3-12)T

**310. POSTERS, PLACARDS, BANNERS, SIGNS, EQUIPMENT, TABLES, MATERIALS, AND DISPLAYS.**

**01. Electrical Cords.** Electrical cords must be protected by cord covers or gaffers tape to prevent an electrical or trip hazard. (10-3-12)T

**02. Railings.** No items may be placed on railings and no persons shall sit or stand on railings. (10-3-12)T

**03. Tossing or Dropping Items.** No items may be tossed or dropped over railings or from one level of the Idaho State Capitol or improvements on the grounds of the State Capitol Exterior to another level or to the ground. (10-3-12)T

**04. Ingress or Egress.** No item, including tables, chairs, exhibits, equipment, materials, and displays shall be located so as to block ingress or egress to any portion of the State Capitol Exterior, or to restrict the follow of individuals using the facility, or to restrict emergency egress or ingress. (10-3-12)T

**05. Attaching, Affixing, Leaning or Propping Materials.** Posters, placards, banners, signs, and displays, including any printed materials, shall not be affixed on any exterior surface of the State Capitol Exterior or on any permanent Commemorative Installation, post, railing, fence or landscaping, including trees. All posters, placards, banners, signs, and displays must be free-standing or supported by individuals. No items may be leaned or propped against any exterior surface of the State Capitol Exterior or embedded into the ground including, but not limited to, placement of a stake, post or rod into the ground to support materials. (10-3-12)T

**06. Materials Causing Damage to Surfaces.** Stages, risers, chairs, tables, sound equipment, props, materials, displays, and similar items shall be constructed and used in a manner that will not damage, scratch, dent, dig or tear any surface on the State Capitol Exterior or any systems or utilities of the State Capitol Exterior including, but not limited to, fire suppression systems, storm drains, ventilation systems, and landscape watering systems. (10-3-12)T

**07. Free Distribution of Literature and Printed Material.** All literature and printed material must be distributed at no charge. The party distributing literature and printed material shall ensure periodically and at the conclusion of its use of the State Capitol Exterior that such material is not discarded outside of designated trash receptacles. (10-3-12)T

**08. Surface Markings.** Users shall not use any material to mark on any surface of the State Capitol Exterior including chalk, paint, pens, ink, or dye. (10-3-12)T

**311. ITEMS SUBJECT TO SEARCH.**

To enhance security and public safety, Security Personnel and law enforcement may inspect: (10-3-12)T

**01. Packages and Bags.** Packages, backpacks, purses, bags, and briefcases reasonably suspected of concealing stolen items or items prohibited by these rules. (10-3-12)T

**02. Items.** Items brought onto the State Capitol Exterior, if there is a reasonable suspicion that an item may be capable of injuring, damaging or harming persons or property on the State Capitol Exterior. (10-3-12)T

**312. PROHIBITED ITEMS.**

The following, as defined in Title 18, Chapter 33, Idaho Code, are not permitted at the State Capitol Exterior: bombs, destructive devices, shrapnel, weapons of mass destruction, biological weapons, and chemical weapons. Security Personnel or law enforcement may direct that any person at the State Capitol Exterior immediately remove from the State Capitol Exterior any club, bat, or other item that can be used to injure, damage, or harm persons or property. (10-3-12)T

**313. SOUND LEVEL AND AMPLIFICATION.**

Sound amplification may not be used on the State Capitol Exterior unless authorized by a Permit. Sound levels, whether amplified or not, must not cause a disruption to the primary use of the State Capitol Exterior. Security Personnel, law enforcement or a state employee or agent supervising the State Capitol Exterior may discontinue an Event, Exhibit or Public Use if they request that the sound level be reduced and those in attendance do not reduce the sound level. (10-3-12)T

**314. UTILITY SERVICE.**

Events, Exhibits, and the public may not use the utility services of the State Capitol Exterior other than restrooms; provided, however, the Director may authorize limited use of electrical service for the duration of an Event or Exhibit authorized by these rules. Utility services include, but are not limited to, electrical, sewage, water, heating, and geothermal services. The Director may terminate the use of utilities if such use interferes with the utility services of the State Capitol Exterior or the equipment or apparatus using utility service fails to comply with applicable rules or codes. (10-3-12)T

**315. LAW ENFORCEMENT AND FACILITY EXIGENCY.**

In case of a fire, bomb threat, utility malfunction, structural failure or other unforeseen emergency or threat endangering public safety or health, or endangering public property, law enforcement, security personnel and state employees or officials may direct all persons off of the State Capitol Exterior and delay or postpone any Event, Exhibit, Public Use or other activity until the emergency or threat is abated. (10-3-12)T

**316. COMPLIANCE WITH LAW.**

All use of the State Capitol Exterior shall comply with applicable law including, but not limited to, fire and safety codes. (10-3-12)T

**317. HEALTH, SAFETY AND MAINTENANCE OF STATE FACILITIES.**

**01. Clean Condition After Use.** Users shall leave the State Capitol Exterior in reasonably clean condition after use, including depositing all trash in designated receptacles. (10-3-12)T

**02. Items Return to Proper Location.** Users shall return all items including, but not limited to, movable furniture and trash receptacles, to their location at the conclusion of the Event or Exhibit. (10-3-12)T

**03. Public Health.** No person shall excrete human waste at the State Capitol Exterior except in designated restroom facilities. For purposes of this section, excrete means the discharge of human waste from the body, including the acts of defecation and urination. For purposes of this section, human waste means human feces or human urine. (10-3-12)T

**04. Fireworks.** No person shall possess or use fireworks on the State Capitol Exterior. (10-3-12)T

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

**400. PERMITS.**

**01. Use Without a Permit.** A Permit grants a reservation providing priority for use of the area specified in the Permit as set forth in Subsection 200.04 of these rules. Applicants desiring to obtain a Permit for use of the State Capitol Exterior outside of the Permit areas, hours or duration or who have not submitted an application within the application period may use the State Capitol Exterior, subject to the provisions of these rules, on a first-come, first used basis. (10-3-12)T

**02. Permit Areas, Hours and Duration.** (10-3-12)T

**a.** The Director will consider and grant Permits only for Event or Exhibit use of the Jefferson Street Steps. (10-3-12)T

**b.** The Director will issue Permits reserving use of the Jefferson Street Steps only between the hours of 7 a.m. and 6 p.m. on State Business Days. (10-3-12)T

**c.** The duration of a Permit will not exceed four (4) consecutive hours. (10-3-12)T

**03. Application Period.** Permit applications must be received and complete at least five (5) State Business Days prior to the requested date and time period of the Permit. The Department will not accept applications submitted more than six (6) months prior to the requested date of the Permit. (10-3-12)T

**04. Validity.** Permits are valid only for the dates, times, and locations specified on the Permit as approved by the Director. (10-3-12)T

**05. Distribution.** Permits shall be granted by the Director on a first-come, first-served basis, subject to Subsection 200.03 of these rules. Only one (1) Permit will be granted for the Jefferson Street Steps during any period of time. (10-3-12)T

**06. Application Requirements.** Applications for a Permit shall be in writing on a form prescribed by

the Director and available at the office of the Division of Public Works and the Department's website. The Director will only process applications that are complete and signed by the individual making a request or an authorized representative of the entity or organization making the request. The Director may make reasonable inquiry to confirm the accuracy of the application and the authority of the party signing the application. (10-3-12)T

**07. Fees and Costs.** There is no fee for a Permit. Individuals, entities, and organizations may be charged for direct costs as set forth in the Permit including, but not limited to, the following: trash collection, janitorial services, and security services. (10-3-12)T

**08. Conditions.** The Director may impose reasonable conditions on the use of the State Capitol Exterior in the Permit for the purpose of protecting persons and property. Conditions may include the acquisition of liability insurance and a bond as security for costs arising from the use. (10-3-12)T

**09. Transferability.** Permits are non-transferable. (10-3-12)T

**401. APPROVALS AND DENIALS OF A PERMIT APPLICATION.**

**01. Period for Approval or Denial.** The Department will approve or deny a complete application within two (2) State Business Days of the submission of the application. The failure of the Department to issue a Permit within (2) State Business Days of the submission of a complete application shall be deemed a denial of the application. (10-3-12)T

**02. Basis for Denial.** Permits may be denied for one (1) or more of the following: (10-3-12)T

**a.** A Permit has been granted for all or part of the requested location during all or part of the requested time period. (10-3-12)T

**b.** A public entity or official will be using all or part of the requested location during all or part of the requested time period. (10-3-12)T

**c.** The requested use would violate any provision of these rules or applicable law. (10-3-12)T

**d.** These rules do not authorize the use for the location or times requested or do not authorize the issuance of a Permit for the location requested. (10-3-12)T

**e.** The Permit application is incomplete, contains a material falsehood, or contains a material misrepresentation. (10-3-12)T

**f.** The Permit applicant has not certified that the applicant will comply with these rules or applicable law. (10-3-12)T

**g.** The party signing the application is not legally competent to bind themselves or the organization or entity submitting the application. (10-3-12)T

**h.** The individual, organization or entity submitting the application: (10-3-12)T

**i.** Failed to pay costs or damages arising from an earlier use of any state facility; (10-3-12)T

**ii.** Made a material misrepresentation regarding the nature or scope of the use on a prior Permit application; (10-3-12)T

**iii.** Violated the terms of prior Permits issued to the individual, organization or entity; or (10-3-12)T

**iv.** Violated any applicable law in the course of a previous Event or Exhibit. (10-3-12)T

**i.** The requested use would cause a clear and present danger to the orderly processes of state of Idaho government or to the use of the State Capitol Exterior due to advocacy of: (10-3-12)T



- i. The violent overthrow of the government of the United States, the state of Idaho, or any political subdivision thereof; (10-3-12)T
- ii. The willful damage or destruction, or seizure and subversion of public property; (10-3-12)T
- iii. The forcible disruption or impairment of or interference with the regularly schedule functions of the state of Idaho; (10-3-12)T
- iv. The physical harm, coercion, intimidation or other invasions of the lawful rights of public officials or the public; or (10-3-12)T
- v. Other disorders of a violent nature. (10-3-12)T

**402. REVOCATION OF A PERMIT.**

A Permit may be revoked by the Director for the violation of any term or condition of the Permit or the violation of law including, but not limited to, the violation of any provision of these rules. (10-3-12)T

**403. APPEALS.**

**01. Time for Appeal.** The individual or the organization or entity submitting an application may request that the Department initiate a contested case within the period set forth below. The Department will not initiate a contested case after the following periods. (10-3-12)T

- a. Seven (7) State Business Days following the written denial of an application for a Permit. (10-3-12)T
- b. Seven (7) State Business Days following the revocation of a Permit. (10-3-12)T
- c. Seven (7) State Business Days following the date the Department was required to approve or deny the application for a Permit pursuant to Subsection 402.01 of these rules. (10-3-12)T

**02. Requesting an Appeal.** The individual or the organization or entity submitting an application shall request an appeal in writing, with a physical copy delivered to the Director at the address set forth in Section 005 of these rules. Electronic delivery shall not be deemed a physical copy. The written request shall contain the following: (10-3-12)T

- a. The name, address, and contact information of the appellant; (10-3-12)T
- b. A concise statement of the reason the appeal should be granted; (10-3-12)T
- c. Whether the appellant requests informal disposition to expedite the contested case; and (10-3-12)T
- d. A description of the Permit sought. (10-3-12)T

**03. Informal Disposition.** If an appellant requests informal disposition, the Director will accept written evidence submitted within five (5) State Business Days of the appeal request, or as otherwise agreed by the Director and the appellant. The Director will issue a final written order affirming, reversing or modifying the denial or revocation of the Permit. (10-3-12)T

**04. Contested Cases.** If an appellant does not request informal disposition, the Director will schedule a hearing and proceed as set forth in Title 67, Chapter 52, Idaho Code. Contested cases will be governed by the provisions of IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (10-3-12)T

**05. Judicial Review.** Judicial review of orders issued in an appeal is provided as set forth in Title 67, Chapter 52, Idaho Code. (10-3-12)T

**404. -- 499. (RESERVED)**

**500. LIABILITY AND INDEMNIFICATION.**

**01. User Retains Liability.** Individuals, entities, and organizations using the State Capitol Exterior are responsible and liable for all suits, damages, claims or liabilities arising from use of the State Capitol Exterior. The state of Idaho shall have no liability for injury to private property, including posters, placards, banners, signs, equipment, tables, materials, and displays on the State Capitol Exterior. (10-3-12)T

**02. State Liability.** Nothing in these rules shall extend the liability of the state of Idaho beyond that provided in the Idaho Tort Claims Act, Title 6, Chapter 9, Idaho Code. (10-3-12)T

**03. Indemnification.** Any individual, entity or organization permitted to use the State Capitol Exterior is deemed to agree to indemnify the state of Idaho from and against all claims, demands, actions or causes of action, together with any and all losses, costs or related expenses asserted by any group or persons for bodily injury or damage to property arising out of or in any way connected with the use of the State Capitol Exterior. (10-3-12)T

**04. No Endorsement.** The grant of a Permit and any action or inaction of the Department shall not imply endorsement or approval by the state of Idaho of the actions, objectives or views of participants in an Event or Exhibit. (10-3-12)T

**501. -- 999. (RESERVED)**

## IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

### 39.02.61 - RULES GOVERNING LICENSE PLATES FOR GOVERNMENTAL AGENCIES AND TAXING DISTRICTS

DOCKET NO. 39-0261-1201

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking procedures. The action is authorized pursuant to Sections 49-201 and 49-443B, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

This rule is needed to create equity for those agencies eligible for exempt vehicle registration. One program is currently exempt from any payment, with all costs subsidized by the Department. This rulemaking will make the application process and registration cost consistent for all exempt plates. It adds provisions specific to the undercover plate program. It also adds standard language required by the Office of Administrative Rules, Sections 002 through 006. In order to provide sufficient time for implementation and budget considerations, if the pending rule is approved as a final rule after legislative review, the requested effective date will July 1, 2013.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased. None.

**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:

Currently, the Department is absorbing the costs for undercover plates which has grown to 2,100 requests processed annually. At \$23 per transaction, the Department is subsidizing these programs at approximately \$48,300 per year. State agencies receive 353 plates (\$8,110), Cities and Counties receive 1,022 plates (\$23,506), and the remaining plates are obtained by federal agencies and surrounding states for law enforcement/investigative purposes. To accommodate budget planning, should the pending rule be approved as final, the requested effective date is July 1, 2013.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because in keeping with legislative direction that administrative costs be borne by the user, this rulemaking will place the responsibility and accountability for costs associated with their respective vehicles with the various state and federal agencies and local jurisdictions. Unlike all other exempt plates, undercover plates do not pay any portion of associated administrative costs. This rulemaking will formalize the process, making it consistent with all other exempt plate programs, which includes the payment of administrative costs only.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: No materials are being incorporated by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Christine Fisher, 334-8679.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 17th day of August, 2012.

Linda L. Emry  
Office of Governmental Affairs  
Idaho Transportation Department  
3311 W State Street  
PO Box 7129, Boise ID 83707-1129  
Phone – 208-334-8810  
FAX – 208-332-4107  
[linda.emry@itd.idaho.gov](mailto:linda.emry@itd.idaho.gov)

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0261-1201**

**000. LEGAL AUTHORITY.**

This rule, establishing the policies used to administer Idaho's exempt and undercover license plate programs is adopted under authority of Sections 49-201 and 49-443B, Idaho Code. ~~(1-2-93)~~( )

**001. TITLE AND SCOPE.**

**01. Title.** This rule shall be known as IDAPA 39.02.61, Rules Governing License Plates for Governmental Agencies and Taxing Districts. ( )

**02. Scope.** This rule establishes the *criteria provisions* for administering the exempt and under cover license plate programs, not otherwise detailed in Title 49, Chapter 4, Idaho Code, Motor Vehicle Registration. ~~(1-2-93)~~( )

**002. WRITTEN INTERPRETATIONS.**

This agency does not rely on written interpretations for these rules. ( )

**003. ADMINISTRATIVE APPEALS.**

All contested cases shall be governed by the provisions of IDAPA 04.11.01. "Idaho Rules of Administrative Procedure of the Attorney General." ( )

**004. INCORPORATION BY REFERENCE.**

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

**005. OFFICE -- OFFICE HOURS -- MAILING AND STREET ADDRESS -- PHONE NUMBERS.**

**01. Street and Mailing Address.** The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street with a mailing address of P O Box 7129, Boise ID 83707-1129. ( )

**02. Office Hours.** Daily office hours are 8 a.m. to 5 p.m. Mountain Time Zone except Saturday, Sunday and state holidays. ( )

**03. Telephone and FAX Numbers.** The central office may be contacted during office hours by phone at 208-334-8649 or by fax at 208-334-8542. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

All records associated with this chapter are subject to and in compliance with the Idaho Public Records Act, as set forth in Sections 9-337 through 9-350, Idaho Code. ( )

~~007.~~ -- 009. (RESERVED)

**010. DEFINITIONS.**

**01. Exempt License Plate.** Standard license plate issued to the entities described in Section 49-426(1), Idaho Code, which are exempt from payment of vehicle operating fees. (1-2-93)

**02. Exempt Personalized License Plate.** An exempt plate which specifically identifies the agency by a unique identifier specified by the agency that does not conform to the standard exempt identifier listed in Section 100; a plate wherein the serial number portion represents inventory control numbers, badge numbers, radio call signs, or other unique lettering or numbering schemes developed by the requesting agency; plates that are lettered and/or numbered to indicate a person's position in the hierarchy of an agency. (1-2-93)

**03. Undercover License Plate.** A standard license plate issued upon application to the Department from an exempt agency with law enforcement authority. Undercover license plates shall be randomly issued by the Department, and appear as a standard county plate. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**200. ISSUING AGENCY.**

All exempt and undercover license plates will be issued by the Idaho Transportation Department upon receipt of a request from an authorized agency. (~~1-2-93~~)( )

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

**300. INFORMATION TO BE PROVIDED BY AN AUTHORIZED AGENCY.**

A request for exempt or undercover plates must contain: (~~1-2-93~~)( )

**01. Actual Name and Address.** The name and address of the requesting agency. (~~1-2-93~~)( )

**02. Vehicle Description.** The description of the vehicle(s) to be registered, including the year, the make, model, type, vehicle identification (VIN), color and title number, and truck weight if eight thousand one pounds (8,001 lbs.) or more. (1-2-93)

**03. Fictitious Name and Address.** The name and address of the registrant to appear on the undercover plate registration, and title records of the Department. ( )

**034. Authorized Official.** The request must be signed by an authorized official of the authorized agency. (1-2-93)

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

**400. VEHICLE TITLING.**

**01. For Exempt Registration and License Plates.** If the vehicle is not titled, the title transaction shall be completed at the local county assessor's office before requesting exempt plates. The control number from the title application may be used in lieu of the title number on the exempt plate request letter. (~~1-2-93~~)( )

**02. Undercover Vehicle Titling.** The actual name and address of the requesting agency, along with the fictitious name and address of the registrant shall be provided directly to the Department on a completed application approved by the authorized official. ( )

**401. -- 499. (RESERVED)**

**500. EXEMPT AND UNDERCOVER PLATE FEES.**

**01. Department Reimbursement.** State and federal agencies and taxing districts must reimburse the

Department the cost of providing license plates. These costs shall be determined by the cost of manufacture and the cost to the Department of processing the transaction. ~~(1-2-93)~~( )

**02. Adjusted Fees.** Periodically, fees may be adjusted in accordance with changes in manufacturing costs, postage, employee costs and legislative mandate. (1-2-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**601. UNDERCOVER PLATE DISPLAY.**

Undercover license plates shall be displayed in accordance with Section 49-428, Idaho Code. A pressure-sensitive sticker displaying an expiration date matching the plate number shall be attached to the plate(s) in the space provided for this purpose. There shall be no discerning markings to indicate that the plate or registration record is in undercover use. ( )

~~601.2~~ -- 699. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

**801. UNDERCOVER PLATE STATUS.**

**01. Expiration of Plates.** Undercover license plates shall expire annually or biennially based upon the application of the authorized agency. Registration status shall appear as valid, until expiration date. Renewals must be made to the Department upon expiration of the undercover license plate. ( )

**02. Transfer of Plates.** Undercover license plates may be transferred between vehicles. If an undercover license plate is transferred to another vehicle, a transfer request must be made to the Department's Vehicle Services Section/Special Plates Unit. ( )

**03. Reissue of Plates.** Physical undercover plates will be reissued in accordance with Section 49-443(2), Idaho Code. ( )

**04. Emission Testing of Undercover Vehicles.** Vehicles issued undercover license plates who list an address in a county or area of required emission testing will need to check with the emission authority to be exempted from the testing requirement, or test as a typical registered vehicle. ( )

~~801.2~~ -- 999. (RESERVED)

## IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

### 39.02.71 - RULES GOVERNING DRIVER'S LICENSE VIOLATION POINT SYSTEM

DOCKET NO. 39-0271-1201

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking procedures. The action is authorized pursuant to Sections 49-201 and 49-326, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

Section 49-326, Idaho Code, authorizes and directs the Department to establish a violation point count system for various moving traffic violations and infractions. This rule implements the system and provides information and guidance to the public and those drivers impacted by violation points. This rulemaking updates the rule with standard required language in Sections 005 and 006, updates the Point Count List with specific violations and acknowledges the point exemption to certain violations, such as texting, in Section 49-1401A, Idaho Code.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: There is no fee or charge imposed or increased in 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 on the state general fund resulting from this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rule is being updated to reflect violations in Sections 49-624, 49-650, and 49-658, Idaho Code, which identify Moving Traffic Violations and also acknowledge statutes which may provide a point exemption such as Section 49-1401A, Idaho Code, with regard to texting (Senate Bill 1274, 2012).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: No materials are being incorporated by reference in this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Ed Pemble, Driver Services Manager, 332-7830.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 17th day of August, 2012.

Linda L. Emry  
Office of Governmental Affairs  
Idaho Transportation Department  
3311 W State Street  
PO Box 7129, Boise ID 83707-1129  
Phone – 208-334-8810 / FAX – 208-332-4107  
[linda.emry@itd.idaho.gov](mailto:linda.emry@itd.idaho.gov)

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0271-1201

**005. OFFICE – OFFICE HOURS – MAILING AND STREET ADDRESS – PHONE NUMBERS.**

**01. Street and Mailing Address.** The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street, with mailing address of PO Box 7129, Boise ID 83707-1129. ( )

**02. Office Hours.** Daily office hours are 8:00 am to 5:00 pm, Mountain Time, except Saturday, Sunday and state holidays. ( )

**03. Telephone and FAX Numbers.** The central office may be contacted during office hours by phone at 208-334-8000 or by fax at 208-334-8739. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

All records associated with this chapter are subject to and in compliance with the Idaho Public Records Act, as set forth in Sections 9-337 through 9-350, Idaho Code. ( )

~~0057~~. -- 099. (RESERVED)

**100. VIOLATION POINT COUNT SYSTEM.**

**01. Points for Moving Traffic Violations.** The Idaho Code authorizes the Department to establish a violation point count system for drivers convicted of various moving traffic violations and infractions occurring either within the state of Idaho, or outside the state of Idaho. Therefore, a schedule of violation points for moving traffic violations and infractions has been established. Moving traffic violations and infractions are violations that occur while operating a motor vehicle. (7-1-97)

**02. Violation Point Count List.** The following violation point count list includes all moving violations and infractions in ~~the~~ Idaho Code, and the appropriate sections. Convictions of moving violations and infractions not herein listed which are violations of a state law or municipal ordinance will receive three (3) violation points, except those for which mandatory suspension/revocation is required by statute or the statute provides a point exemption. (7-1-97)( )

**03. Points Assessed.** Each moving traffic conviction and infractions shall be assessed from one (1) point for less serious violations to a maximum of four (4) points for more serious violations. The degree of seriousness of moving traffic violations and infractions has been determined by considering the possibility of bodily injury or property damage resulting from such violation. (7-1-97)

**04. Dual Violation.** In cases where the driver is convicted of more than one (1) violation arising from one (1) occasion of arrest or citation, only one (1) conviction will be counted and assessed points against the driver's record. The conviction counted will be counted with the greater amount of points. (7-20-89)

**05. Speeding Violation.** Drivers convicted of traveling sixteen (16) miles per hour or more over the posted maximum speed limit or exceeding the speed limit in a construction danger zone will receive four (4) points. Driving convictions of ~~IDAPA 39.02.71~~ other speeding violations will receive three (3) points. (7-1-97)( )

101. -- 199. (RESERVED)

**200. LIST OF MOVING TRAFFIC CONVICTIONS AND/OR VIOLATIONS POINT COUNT.**

Idaho Code	Convictions Reported by Court	Point Count
49-603	Starting Parked Vehicle	two (2)
49-604	Limitations On Backing	one (1)



<b>Idaho Code</b>	<b>Convictions Reported by Court</b>	<b>Point Count</b>
49-615	Drivers To Exercise Due Care	three (3)
49-616	Driving Through Safety Zone Prohibited	two (2)
<a href="#">49.624</a>	<a href="#">Duty Upon Approaching a Stationary Police Vehicle, or Emergency Vehicle Displaying Flashing Lights</a>	<a href="#">three (3)</a>
49-625	Operation Of Vehicles On Approach Of Authorized Emergency Police Vehicles	three (3)
49-630	Drive On Right Side of Road - Exceptions	three (3)
49-631	Passing Vehicles Proceeding In Opposite Directions	two (2)
49-632	Overtaking A Vehicle On Left	three (3)
49-633	When Passing On The Right Is Permitted	two (2)
49-634	Limitations On Overtaking On The Left	three (3)
49-635	Further Limitations On Driving On Left Of Center Of Highway	three (3)
49-636	One-way Highways	one (1)
49-637	Driving On Highways Laned For Traffic	one (1)
49-638	Following Too Closely	three (3)
49-640	Vehicles Approaching Or Entering Unmarked Or Uncontrolled Intersection	three (3)
49-641	Vehicle Turning Left	three (3)
49-642	Vehicle Entering Highway	three (3)
49-644	Required Position And Method Of Turning	three (3)
49-645	Limitations On Turning Around	three (3)
49-648	Obedience To Signal Indicating Approach Of Train	four (4)
49-649	Compliance With Stopping Requirement At All Railroad Grade Crossing	four (4)
<a href="#">49-650</a>	<a href="#">Failure to Allow Sufficient Undercarriage Clearance at Railroad Grade Crossing</a>	<a href="#">three (3)</a>
49-651	Emerging From Alley, Driveway Or Building	three (3)
49-654	Basic Rule And Maximum Speed Limits	three (3) four (4)
49-655	Minimum Speed Regulation	three (3)
49-656	Special Speed Limitations	three (3) four (4)
49-657	Construction Danger Zone Speed Limits	three (3)
<a href="#">49-658</a>	<a href="#">School Zone Speed Limit</a>	<a href="#">three (3)</a>
49-702	Pedestrians' Right Of Way In Crosswalks	three (3)
49-801	Obedience To And Required Traffic Control Devices	three (3)
49-802	Traffic Control Signal Legend	three (3)
49-804	Flashing Signals	three (3)
49-807(2)	Stop Signs	three (3)

<b>Idaho Code</b>	<b>Convictions Reported by Court</b>	<b>Point Count</b>
49-807(3)	Failure To Yield – Signed Intersection	three (3)
49-808	Turning Movements And Required Signals	three (3)
49-1302	Duty To Give Information In Accident Involving Damage To A Vehicle	four (4)
49-1303	Duty Upon Striking Unattended Vehicle	four (4)
49-1304	Duty Upon Striking Fixtures Upon Or Adjacent To A Highway	four (4)
49-1401(3)	Inattentive Driving	three (3)
<u>49-1401A</u>	<u>Texting While Driving</u>	<u>Exempt</u>
49-1419	Obedience To Traffic Direction	two (2)
49-1421(1)	Driving On Divided Highways	one (1)
49-1421(2)	Restricted Access	one (1)
49-1422	Overtaking And Passing School Bus	four (4)
49-1424	Racing On Public Highways	four (4)

~~(3-30-01)~~( )

## IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

### 39.03.42 - RULES GOVERNING HIGHWAY RIGHT-OF-WAY ENCROACHMENTS ON STATE RIGHTS-OF-WAY

#### DOCKET NO. 39-0342-1201 (FEE RULE)

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is October 1, 2012.

**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 rule-making procedures have been initiated. The action is authorized pursuant to Sections 40-310 and 40-312, Idaho Code, and per the requirements of Sections 40-311, 40-313, 49-202(19), (23), and (28), and 49-221, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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 rule-making:

This rulemaking is in response to concerns raised by legislators, property developers and the private sector, to find a means to reduce or minimize restrictions associated with access management. The rulemaking clarifies and simplifies the permit appeal process, renames and redefines the highway types and access types, places more authority with the District Engineers, and restructures the fee schedule based on proposed land use.

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

The intent is to create greater economic opportunity and development for private property owners and developers by providing greater access to property along state highways, property that might otherwise have less development potential due to inadequate access, while also mitigating potential conflicts between development and safety or mobility by requiring adequate mitigation of development impacts.

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

The existing fee schedule has been restructured to recognize categories of land use as opposed to categories of approaches and encroachments. A cost/benefit analysis indicates that if right-of-way encroachment permits issued in Fiscal Year 2012 had been issued under the new fee schedule, the result would have been a revenue reduction of approximately \$1,750.00, or 4.2%. This is based on the issuance of nearly 800 permits statewide.

**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 the rule is being amended based upon the recommendations of the Access Management Team formed by the Director of the Idaho Transportation Department in January 2011, prior to the introduction of negotiation requirements in Senate Bill 1366, 2012. The Access Management Team, which negotiated the proposed changes within the group, consisted of representatives from the legislature, the development community, ITD staff and land use planning entities. The intent of the rule change is to create greater economic opportunity by providing for development.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: There are no materials being incorporated by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Greg Laragan, Highway Operations Engineer, 334-8535.

Anyone may submit written comments regarding the proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 17th day of August, 2012.

Linda L. Emry  
Office of Governmental Affairs  
Idaho Transportation Department  
3311 W State Street  
PO Box 7129, Boise ID 83707-1129  
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[linda.emry@itd.idaho.gov](mailto:linda.emry@itd.idaho.gov)

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**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 39-0342-1201**

**000. LEGAL AUTHORITY.**

The Idaho Transportation Board adopts this rule under the authority of Sections 40-310~~(9)~~, ~~40-311(1)~~, and 40-312~~(3)~~, ~~40-313(2)~~, and per the requirements of Sections 40-311, 40-313, 49-202(19), (23) and (28), and 49-221, ~~and 67-5203~~, Idaho Code. ~~(3-30-01)~~(10-1-12)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**003. ADMINISTRATIVE APPEAL.**

**01. Commencement.** Applicants may appeal denied permits, or permits granted with conditions that the applicant believes to be unreasonable, in writing to the Department's District ~~Traffic office~~ Engineer within thirty (30) days of receipt of written notification of the denial or grant of the permit. The appeal process commences on the date the Department's District office receives written notification of appeal from the applicant. ~~(3-30-01)~~(10-1-12)T

- a. Idaho Transportation Department, District One  
600 West Prairie  
Coeur d'Alene, ID 83814-8764 (3-30-01)
- b. Idaho Transportation Department, District Two  
2600 North and South Highway  
Lewiston, ID 83501-0837 (3-30-01)
- c. Idaho Transportation Department, District Three  
8150 Chinden Blvd  
Boise, ID 83714-2028 (3-30-01)
- d. Idaho Transportation Department, District Four

216 Date Street  
Shoshone, ID 83352-0820 (3-30-01)

e. Idaho Transportation Department, District Five  
5151 South 5th  
Pocatello, ID 83205-4700 (3-30-01)

f. Idaho Transportation Department, District Six  
206 North Yellowstone  
Rigby, ID 83442-0097 (3-30-01)

**02. Process Hold.** If at any time during the appeal process it is determined that insufficient documentation was submitted with the appeal, all parties shall be notified that the appeal process is placed on hold until the necessary documentation is supplied. (3-30-01)

**03. Initial Appeal Process.** The District will have ~~fourteen~~ ~~thirty~~ ~~(1430)~~ working days to review the appeal. If the District ~~Engineer does not rule on the appeal within the thirty (30) day period, the denial of the permit shall be deemed overturned and the permit shall be issued, or the contested permit conditions stricken. Notice of the decision of the District Engineer shall be issued by certified mail within seven (7) days of the ruling. Otherwise, if the District Engineer does not overturn the original denial or strike the contested provisions from the permit, upon receipt of a written request from the applicant within twenty-one (21) days of the date of the denial of the appeal, it shall be forwarded to the State Traffic Engineer who will have fourteen (14) working days to review and prepare it for review by the Department's Chief Engineer. The Department's Chief Engineer will have fourteen (14) working days to review the appeal. The appellant shall be notified by certified mail within seven (7) working days of the Department's Chief Engineer's decision.~~ (3-30-01)

~~04. Secondary Appeal Process. If further arbitration is required, the appellant has thirty (30) days following denial notification to contact the Department's legal section and to initiate an appeal to the Idaho Transportation Board. The appeal process will be initiated processed in accordance with the Idaho Administrative Procedure Act and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General."~~ (3-30-01)(10-1-12)T

**004. INCORPORATION BY REFERENCE.**  
There are no documents incorporated by reference in this chapter. (10-1-12)T

**005. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS – PHONE NUMBERS.**

**01. Street and Mailing Address.** The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street with a mailing address of P O Box 7129, Boise ID 83707-1129. (10-1-12)T

**02. Office Hours.** Daily office hours are 8 a.m. to 5 p.m., Mountain Time, except Saturday, Sunday and state holidays. (10-1-12)T

**03. Telephone and FAX Numbers.** The central office may be contacted during office hours by phone at 208-334-8000 or by fax at 208-334-3858. (10-1-12)T

~~0046. IDAHO PUBLIC RECORDS ACT COMPLIANCE.~~  
~~Rules contained herein are promulgated in accordance with Title 67, Chapter 52, Idaho Administrative Procedure Act (IDAPA) and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." All records associated with this chapter are subject to and in compliance with the Idaho Public Records Act, as set forth in Sections 9-337 through 9-350, Idaho Code.~~ (3-30-01)(10-1-12)T

~~0057. – 009. (RESERVED)~~

**010. DEFINITIONS.**

- 01. Shall/Will, Should, May.** The use of “shall” or “will,” “should,” and “may” denote the following conditions: (3-30-01)
- a.** Shall/Will. A mandatory condition. ~~Mandatory~~ or requirements ~~are stipulated.~~ (3-30-01)(10-1-12)T
  - b.** Should. An advisory or recommended condition. ~~Advisable, recommended usage~~ or usage, but not mandatory. (3-30-01)(10-1-12)T
  - c.** May. A permissive condition. No requirement is ~~intended~~ mandated. (3-30-01)(10-1-12)T
- 02. Access.** The ability to enter or leave a public highway or highway right-of-way from an abutting private property or another public highway or public highway right-of-way. (3-30-01)(10-1-12)T
- 03. ADT.** Average Daily Traffic. The total volume of traffic during a given time period in whole days greater than one (1) day and less than one (1) year divided by the number of days within that time period. (3-30-01)
- 04. Applicant.** Agency, owner, or an authorized representative of the property owner, or utility facility applying for a permit to encroach within state highway rights-of-way. (3-30-01)(10-1-12)T
- 05. Appraisal.** A written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of monetary value for a specific property, ~~for~~ based on a specific use, as of a specific date, supported by the presentation and analysis of relevant market information. (3-30-01)(10-1-12)T
- 06. Approach.** A connection between the outside edge of the shoulder or curb line and the abutting property at the highway right-of-way line, intended to provide access to and from said highway and the abutting property. An approach may include a driveway, alley, street, road or highway. (3-30-01)
- 07. Approach Flare.** The approved radius connecting the edge of the approach to the edge of the highway. The term “approach radius” is interchangeable with “approach flare.” (3-30-01)
- 08. Approach Transition.** The area from the edge of an urban approach sloped to match the curb and border area elevations. The term “approach apron” is interchangeable with “approach transition.” (3-30-01)
- 09. Approach Skew Angle.** For all approaches, the angle of deflection between a line perpendicular to the highway centerline and the approach centerline. (3-30-01)
- 10. Approach Width.** The distance between the outside edges of the approach measured perpendicular to the approach centerline along the curb line or the edge of pavement, excluding flares, transitions and radii. (3-30-01)
- 11. Authorized Representative.** Any applicant, other than the property owner, having notarized written verification signed by the owner giving authorization to act on the owner’s behalf. (3-30-01)
- 12. Auxiliary Lane.** The portion of the roadway adjoining the traveled way used for speed change, turning, storage for turning, weaving, truck climbing, and other purposes supplementary to through-traffic movement. (3-30-01)
- 13. Board.** The Idaho Transportation Board, as established by Title 40, Chapter 3, Idaho Code. (3-30-01)
- 14. Border Area.** The area between the outside edge of the shoulder or back of curb and the highway right-of way line. (3-30-01)
- 15. Boulevard Approach.** A two-way approach intended for high ADT volumes of large commercial vehicles, having a maximum width of ~~twenty five point six (25.6) meters~~ eighty-four (84) feet in which opposing traffic is separated by a raised ~~one point two (1.2) meters~~ four (4) foot wide non-traversable median. (3-30-01)(10-1-12)T

- 16. Capacity.** The maximum number of vehicles that can reasonably be expected to travel along a lane of a highway during a given time period under prevailing roadway and traffic conditions. (3-30-01)
- ~~17. Chief Engineer. The administrator of the Division of Highways for the Idaho Transportation Department, or a delegated representative. (3-30-01)~~
- 187. Clear Zone.** An area outside the traveled way, auxiliary lanes and shoulders that is constructed and maintained as free from physical obstructions as practical, for use as a recovery area by errant vehicles. (3-30-01)
- 198. Commercial Approach.** An approach serving a business or businesses. (3-30-01)
- 2019. Conduit.** A tube or trough for receiving and protecting utility-related structures including, but not limited to, electrical wires, fiber optic cable, and fluids. ~~(3-30-01)~~(10-1-12)T
- ~~21. Congestion. A restriction or interference to the normal free flow of travel. "Congestion" is directly related to volume such that as traffic volumes increase, congestion increases. (3-30-01)~~
- 220. Construction.** The building of new facilities or the modification of existing facilities; ~~other than~~ Does not include maintenance. ~~(3-30-01)~~(10-1-12)T
- ~~23. Controlled Access Highway. Any highway or roadway where access to or from abutting properties is restricted by the public authority having the jurisdiction. (3-30-01)~~
- 241. Corner Clearance.** The distance along the curb line or outside edge of the shoulder measured from the beginning or end of the intersecting roadway flare to the nearest edge of the adjacent approach, excluding flares or transitions. (3-30-01)
- 252. Department.** The Idaho Transportation Department (ITD). (3-30-01)
- 263. Distance Between Approaches.** The distance measured along the curb line or outside edge of the shoulder between the nearest edges of adjacent approaches, excluding the flares, transitions or radii. (3-30-01)
- 274. District.** An administrative and maintenance subdivision of the Idaho Transportation Department encompassing a particular geographical region of the state of Idaho, per Section 40-303, Idaho Code. ~~(3-30-01)~~(10-1-12)T
- 285. District Engineer.** The administrator of an Idaho Transportation Department administrative district, or a delegated representative. (3-30-01)
- 26. District Route.** A state highway that accommodates trips of limited mobility and provides high levels of access to communities, to include distributing trips to geographical areas and serving major commercial and industrial districts. District routes may provide intra-community continuity and connection, to include local bus routes, but should not be used to provide direct access to residential lots. (10-1-12)T
- 27. Economic Opportunity.** Facilitate the increase in Idaho Gross Domestic Product, job creation, increased business, revenue; improve the efficiency in which goods are transported; and reduction in travel times for commuting, commerce, recreation, and tourism. (10-1-12)T
- 298. Emergency.** Any unscheduled work required to correct or prevent a hazardous situation that poses an imminent threat to life or property. (3-30-01)
- 3029. Encroachment.** Any authorized or unauthorized use of highway right-of-way ~~or easements~~ or the air space immediately above the highway right-of-way. ~~(3-30-01)~~(10-1-12)T
- 30. Encroachment Permit.** Written authorization from the Department to use state highway right-of-way or the airspace above it under the conditions set forth in the permit. (10-1-12)T

- ~~31.~~ ~~**Exchange Deed.** A legal document of title, between the Idaho Transportation Department and the owner of real property, transferring and describing a property right (such as easement, usage, access).~~ ~~(3-30-01)~~
- 321.** **Farming.** Any activity associated with crops, including seed. (3-30-01)
- ~~32.~~ **FHWA.** The Federal Highway Administration, a division of the U. S. Department of Transportation. (3-30-01)
- ~~34.~~ **Fiber Optic Cable.** A cable containing one (1) or more glass or plastic fibers that has the ability to transmit light along its axis. (3-30-01)
- ~~35.~~ **Field Approach.** An approach that serves only non-residential agricultural property, including farmyards. (3-30-01)
- ~~36.~~ ~~**Fixture.** Any sign, guard rail, bridge, tunnel, or other appurtenances placed with the highway right of way.~~ ~~(3-30-01)~~
- ~~37.~~ **Flare Tangent Distance.** The distance of the approach radius measured along the edge of pavement. (3-30-01)
- ~~38.~~ **Frontage.** The distance measured along the highway right-of-way line ~~between the frontage boundary lines of property~~ that is contiguous ~~to highway right of way~~ with the boundary line of the abutting property. ~~(3-30-01)~~(10-1-12)T
- ~~39.~~ **Frontage Road.** A road auxiliary to and located to the side of the highway for service to abutting properties and adjacent areas for the purpose of controlling access to the highway. (3-30-01)
- ~~40.~~ **Frontage Boundary Line.** A line perpendicular to the highway centerline that begins at the point of intersection of the abutting property line and the highway right-of-way line. (3-30-01)
- ~~41.~~ **Full Control of Access.** Any section of a highway system where access is prohibited except for interchange connections. (3-30-01)
- ~~42.~~ ~~**Functional Classification.** A grouping of highways by the character of service (access and mobility) they provide. These include, but are not limited to, a minor collector, major collector, minor arterial, principal arterial, and interstate as defined in the latest edition of the Highway Functional Classification Manual by the U. S. Department of Transportation, FHWA.~~ ~~(3-30-01)~~
- ~~43.~~ **Government Agencies.** As used in ~~this manual~~ these rules, the term includes federal, state, county, city, or local highway jurisdictions. ~~(3-30-01)~~(10-1-12)T
- ~~44.~~ **Highway Right-of-Way.** Property ~~rights to land generally designated~~ used for ~~transportation~~ highway purposes, open to the public, and under the jurisdiction of a ~~Public Highway~~ government Agency. Such property may be owned by the government agency in fee simple or be subject to an easement for highway purposes. ~~(3-30-01)~~(10-1-12)T
- ~~45.~~ **Imminent Threat.** Includes major traffic control deficiencies or safety situations that are likely to result in serious injury or loss of life. (3-30-01)
- ~~46.~~ **Interstate Highway.** As identified by federal code, a part of the National System of Interstate and Defense Highway System- that includes ~~A~~an FHWA-approved arterial highway, freeway, or expressway with a fully controlled access, and having medians, grade separations at cross roads and ramp connections for entrance to and exit from the traveled way. ~~(3-30-01)~~(10-1-12)T
- ~~47.~~ **Joint-Use Approach.** An approach constructed at a common boundary between adjacent properties that abut the highway. A joint-use approach is equally owned and shared as common access by both



property owners. (3-30-01)

**485. Landscaping.** Any action taken to change the features or appearance of the highway right-of-way or abutting property with plants, soil, rock and related material. (3-30-01)

**496. Loaded Payroll Rate.** ~~A rate of compensation that includes hourly wages plus the associated employer overhead and benefit costs of associated benefits.~~ (3-30-01)(10-1-12)T

**5047. Local Highway Agency.** Any city, county, highway district or other local board or body having authority to enact regulations, resolutions, or ordinances relating to traffic on the highways, highway rights-of-way and streets within their respective jurisdiction. (3-30-01)

**5148. Local Road.** A city, county or highway district highway whose primary function is to provide access to adjacent properties. (3-30-01)

~~**52. Major Collector.** Any public highway designated as a route to provide traffic circulation and collect traffic from local roads within residential neighborhoods and commercial and industrial areas and channel it into the arterial system. Major collector highway segments are in rural locations and typically have low to medium volumes with high speeds. (3-30-01)~~

**5349. Median.** The portion of a divided highway or approach that separates opposing traveled ways. Medians may be raised, flush, or depressed relative to the roadway surface, and may be landscaped or paved. (3-30-01)

**540. Median Opening.** A paved area bisecting opposite directions of a divided roadway that is designed to permit traffic to cross at least one (1) direction of travel. (3-30-01)

~~**55. Minor Arterial.** Any rural or urban public highway designated as a route that provides substantial corridor movement with trip length and density suitable for linking cities, counties, states, and other traffic generators. Minor arterial highway segments typically have medium to high traffic volumes with speeds that vary from medium in urban areas to high in rural areas. (3-30-01)~~

~~**56. Multiple Family Residential.** A single parcel of land containing more than one (1) residence (i.e., duplexes, apartments, trailers). (3-30-01)~~

**571. MUTCD.** The Manual on Uniform Traffic Control Devices for Streets and Highways, latest edition, as adopted by the Idaho Transportation Board in accordance with Section 49-201(3), Idaho Code. A manual written by the Federal Highway Administration that sets national minimum standards for signing, striping, and traffic control devices. (3-30-01)

~~**58. National Highway System (NHS).** The system of federal aid highways, urban and rural, designated and approved in accordance with the provisions of 23 U. S. C. 103(b). (3-30-01)~~

**592. Non-Standard Approach.** Any approach that does not meet Department standards. (3-30-01)

~~**60. Partial Control of Access.** Any section of the State Highway System that has restrictions placed on any encroachment within the state highway right of way. (3-30-01)~~

~~**6153. Performance Bond.** A statutory bond, issued by a surety company authorized to do business in the state of Idaho, that guarantees performance of work in accordance with permit requirements. (3-30-01)~~

~~**6254. Permittee.** Person or persons, utility facilities, and other agencies granted permission to encroach within the highway right-of-way for authorized purposes other than normal travel. (3-30-01)~~

~~**63. Principal Arterial.** Any rural or urban highway designated as a route that provides substantial corridor movement for volumes greater than minor arterial highways. Principal arterial highway segments typically have medium to high volumes with speeds that vary from medium in urban areas to high in rural areas. (3-30-01)~~

~~64~~**55.** **Private Approach.** Every privately owned traveled way that is used for ingress to and egress from the highway right-of-way and an abutting property. (3-30-01)

~~65~~**6.** **Property Line Clearance.** The distance measured along the curb line or outside shoulder edge from the frontage boundary line to the nearest edge of the approach width, excluding flares, transitions and radii. (3-30-01)

~~66~~**57.** **Public Approach.** Any approach that serves the public without restriction and is maintained by a ~~public~~ government agency. ~~(3-30-01)~~(10-1-12)T

~~67~~**58.** **Public Highway.** ~~Any~~ highways open to public use ~~in the state, whether~~ and maintained by ~~the state or by any county, highway district, city or other political subdivision~~ a government agency. ~~(3-30-01)~~(10-1-12)T

~~68~~**59.** **Public Highway Agency.** The state transportation department, any city, county, highway district, or any other state agency, or any federal or Indian reservation, which has jurisdiction over public highway systems and highway rights-of-way. (3-30-01)

~~69~~**60.** **Regional Route.** A state highway that accommodates trips of moderate length with a lower level of mobility than a Statewide Route and that provides moderate access to communities, to include providing mobility for people and freight through and between communities and major activity centers of the region. (10-1-12)T

~~69-~~ **Residential Approach.** ~~A private approach serving single or multiple single family residences.~~ ~~(3-30-01)~~

~~70~~**61.** **Roadside.** Any area beyond the main traveled way that may or may not be within the highway right-of-way. (3-30-01)

~~71~~**62.** **Roadway.** That portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of sidewalks, shoulders, berms and other portions of the rights-of-way. (3-30-01)

~~72~~**63.** **Rural Area.** ~~All areas outside the boundaries of an urban area.~~ State highway rights-of-way and right-of-way corridors outside the limits of Urban and Transitional areas. ~~(3-30-01)~~(10-1-12)T

~~73-~~ **Rural Approach.** ~~An approach in a non-curb and gutter section of the public highway which may or may not be within a designated rural area.~~ ~~(3-30-01)~~

~~74~~**64.** **Setback.** The horizontal distance between the highway right-of-way line and permanent fixtures, including but not limited to gas pump islands, signs, display stands and buildings, measured at right angles to the highway centerline. (3-30-01)

~~65.~~ **Shoulder.** The portion of the right-of-way contiguous with the traveled way that accommodates stopped vehicles, emergency use, and lateral support of the sub-base, base, and surface courses. (10-1-12)T

~~75~~**66.** **Signal Spacing.** The distance between signalized intersections measured from the center of intersection to the center of intersection. (3-30-01)

~~76~~**7.** **Slope.** Slope is expressed as a non-dimensional ratio between vertical and horizontal distance. For side slopes, the vertical component is shown first, then the horizontal. (3-30-01)

~~77~~**68.** **Speed.** The rate of vehicular travel as measured in miles per hour. All speeds used in this document shall be the eighty-fifth percentile speed as determined by an engineering study. ~~As it applies to the functional classification of a highway, in urban areas, "high" speeds are equal to or above forty five (45) mph, and "medium" speeds are thirty five (35) to forty (40) mph; in rural areas, "high" speeds are equal to or above fifty (50) mph.~~ ~~(3-30-01)~~(10-1-12)T

~~7869.~~ **State Highway System.** The principal highway corridors in the state, including connections and extensions through cities and roads to every county seat in the state, as approved by the Idaho Transportation Board and officially designated as a state highway. (3-30-01)

~~79.~~ **State Traffic Engineer.** ~~The administrator of the Headquarters' Traffic section for the Idaho Transportation Department, or a delegated representative.~~ (3-30-01)

~~70.~~ **Statewide Route.** A state highway that provides the highest level of mobility and speeds over long distances. Access from a statewide route to communities and major activity centers should be by way of public roads with spacing that supports mobility and speed. (10-1-12)T

~~71.~~ **Stopping Sight Distance.** The sum of: (10-1-12)T

~~a.~~ The brake reaction distance, which is the distance traveled by the vehicle from the instant the driver perceives an object necessitating a stop, to the moment the brakes are applied; and (10-1-12)T

~~b.~~ The braking distance, which is the distance the vehicle travels from the moment the brakes are applied until the vehicle comes to a complete stop. (10-1-12)T

~~8072.~~ **Structure.** ~~Shall consist of~~ Includes, but is not be limited to, bridges, culverts, siphons, headwalls, retaining walls, buildings and any incidental construction not otherwise defined herein. ~~(3-30-01)~~(10-1-12)T

~~8173.~~ **Subdivision.** A division of real property into three (3) or more separately platted parcels. (3-30-01)

~~8274.~~ **Temporary Encroachment.** Any encroachment that is not approved as a permanent placement within the highway right-of-way. (3-30-01)

~~8375.~~ **Traffic.** Pedestrians, bicycles, animals, vehicles, streetcars, buses and other conveyances, either singly or together, that use the highway right-of-way for the purpose of travel. (3-30-01)

~~8476.~~ **Traffic Control Device.** Any marking or device whether manually, electronically, or mechanically operated, placed or erected by an authority of a ~~public body~~ government agency or official having jurisdiction, for the purpose of regulating, warning or guiding traffic. ~~(3-30-01)~~(10-1-12)T

~~77.~~ **Traffic Impact Study.** A comprehensive analysis of the anticipated transportation network conditions with and without an applicant's proposed new or modified access, including an analysis of mitigation measures. (10-1-12)T

~~78.~~ **Transitional.** State highway rights-of-way and right-of-way corridors within the area of city impact of any incorporated city, or areas designated as an area of city impact by city or county comprehensive plans. (10-1-12)T

~~8579.~~ **Traveled Way.** The portion of the roadway for the movement of vehicles, exclusive of shoulders. (3-30-01)

~~860.~~ **Travel Lane.** That portion of the traveled way designated for use by a single line of vehicles. (3-30-01)

~~871.~~ **Trenching.** A method in which access is gained by excavation from ground level to the required ~~level~~ underground depth for the installation, maintenance, removal, or inspection of a cable, casing, conduit or pipe. The excavation is then back filled with approved material and the surface is then returned to a condition specified by the Department. ~~(3-30-01)~~(10-1-12)T

~~882.~~ **Turnouts.** Roadside areas immediately adjacent to highways which may be utilized by vehicles for purposes of short-term parking or turning. They are extensions of the ~~mainline roadway~~ traveled way. ~~(3-30-01)~~(10-1-12)T

~~893.~~ **Unauthorized Encroachment.** Any encroachment that has been placed, modified, or maintained, or removed within the highway right-of-way without authorization by the Department. ~~(3-30-01)~~(10-1-12)T

~~9084.~~ **Urban Area.** ~~Any geographical area within the city limits of any incorporated city having a population of five thousand (5,000) or more inhabitants. Population numbers referred to shall be determined by the latest United States Census.~~ State highway rights-of-way and right-of-way corridors within the limits of any incorporated city. ~~(3-30-01)~~(10-1-12)T

~~91.~~ **Urban Approach.** ~~An approach located within a curb and gutter section of a public highway that may or may not be within an urban area.~~ ~~(3-30-01)~~

~~9285.~~ **Utility Facility.** All privately, publicly or cooperatively owned systems used for the production, transmission, or distribution of communications, cable television, power, electricity, light, heat, petroleum products, ore, water, steam, waste, irrigation, storm water not connected with highway drainage, and other similar items, including communication towers, guy wires, fire and police signal systems, and street lighting systems, that directly or indirectly serve the public or comprise part of the distribution systems which directly or indirectly serve the public. (3-30-01)

~~9386.~~ **Utility Locating Service.** Any locally or regionally recognized service that locates and maintains records of existing utility facilities. (3-30-01)

~~9487.~~ **Vehicle.** Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon rails or tracks. (3-30-01)

~~9588.~~ **Vision Triangle.** An area delineated by extending perpendicular lines along the face of curb or edge of pavement from their point of intersection ~~twelve point two (12.2) meters~~ forty (40) feet in either direction and by a height between ~~point nine (0.9) meters~~ three (3) feet and ~~three (3) meters~~ ten (10) feet above the existing centerline highway elevation. ~~(3-30-01)~~(10-1-12)T

~~9689.~~ **Volume.** ~~As applied to the functional classification of a highway, is~~ The number of vehicles estimated to use a certain type of travel lane during a twelve-month period. A highway with “high” volumes is at or near capacity; a highway with “medium” volumes is at or near fifty percent (50%) of capacity. ~~(3-30-01)~~(10-1-12)T

~~9790.~~ **Warrant.** An evaluation of need based on an engineering study. (3-30-01)

~~91.~~ **Working Day.** Any day except for Saturday, Sunday and any holiday as defined in Section 67-5302(15), Idaho Code. ~~(10-1-12)T~~

~~011.~~ **ACCESS TYPES:**

~~Access control on all segments of the State Highway System shall be upgraded to match the most current functional classification.~~ ~~(3-30-01)~~

~~01.~~ **Type I (Major Collector).** ~~Type I access control is applicable to segments of the State Highway System functionally classified as major collectors. All major collectors shall be upgraded to a minor arterial or higher class once located within an urban area.~~ ~~(3-30-01)~~

~~02.~~ **Type II (Minor Arterial).** ~~Type II access control is applicable to segments of the State Highway System functionally classified as minor arterials and some selected segments classified as major collectors that exhibit characteristics of minor arterials. Public highway connections and new private approaches may be permitted in accordance with Department spacing standards. Joint use approaches are encouraged. As land uses change, existing approaches should be reviewed to encourage development of frontage roads.~~ ~~(3-30-01)~~

~~03.~~ **Type III (Principal Arterial).** ~~Type III access control is applicable to segments of the State Highway System functionally classified as principal arterials. Type III can also be applied to selected segments classified as minor arterials but exhibit characteristics of principal arterials. Public highway connections and new private approaches may be permitted in accordance with Department spacing standards. Joint use approaches are encouraged. As land uses change, existing approaches should be reviewed to encourage development of frontage~~

~~roads.~~

~~(3-30-01)~~

~~04. **Type IV (Principal Arterial, Multi-Lane, Divided).** Type IV access control is applicable to selected segments of the State Highway System functionally classified as principal arterials and have four (4) or more lanes with a median or continuous center turn lane. Public highway connections and new private approaches may be permitted in accordance with Department standards. Joint-use approaches are encouraged. As land uses change, existing approaches should be reviewed to encourage development of frontage roads.~~

~~(3-30-01)~~

~~05. **Type V (Interstate).** Type V access control is applicable to State highways accessible only by interchanges (ramps). These highways typically include the interstate system and require FHWA approval for any change in access.~~

~~(3-30-01)~~

0121. -- 099. (RESERVED)

100. GENERAL.

01. Access Control. (3-30-01)

a. The Department shall retain the authority to issue all **encroachment** permits on the State Highway System ~~having access control types II through V or where control of access has been acquired by the Department.~~

~~(3-30-01)~~(10-1-12)T

~~b. All rights of access shall be verified by legal documents of title.~~ (3-30-01)

~~eb.~~ No change may be made to the control of access on ~~the National Highway System (NHS)~~ **any Interstate Highway** without the approval ~~by of~~ the Idaho Transportation Board and FHWA. ~~(3-30-01)~~(10-1-12)T

02. Safety Requirements. (3-30-01)

a. It is the permittee's responsibility to provide for safe, efficient passage and protection of vehicles, pedestrians, and workers during any permitted work within the highway right-of-way. (3-30-01)

b. The permittee shall submit, for Department approval, a traffic control plan for the installation, maintenance, or removal of any state highway right-of-way encroachment. The permittee shall provide advance notification to the Department prior to implementing any traffic control. (3-30-01)

c. During the progress of the work, barricades, signs and other traffic control devices shall be erected and maintained by the permittee in conformance with the current "Manual on Uniform Traffic Control Devices." The permittee shall be required to meet the minimum requirements of the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD), as adopted by the Department. (3-30-01)

d. All flaggers working on the State Highway System shall be certified in or recognized by the state of Idaho. They shall carry on their person a current flagger identification card that is recognized by the state of Idaho. All traffic control devices used on the State Highway System shall comply with current FHWA crash criteria. (3-30-01)

e. When required, a striping plan for the placement of temporary and permanent pavement markings shall accompany the approved permit to use the right-of-way. Materials, placement, and removal of all pavement markings shall conform to current Department specifications and standards. (3-30-01)

03. **Maintenance of Encroachments.** Once an encroachment has been constructed by the permittee to Department standards, maintenance of the encroachment, unless otherwise provided, shall be as follows: (3-30-01)

a. Paved public approach - State maintains to the right-of-way line. (12-26-90)

b. Paved private approach - State maintains to end of radii, permittee maintains beyond the radii. (12-26-90)

- c. Gravel public approach. State installs an asphalt wedge sufficient to protect the roadway pavement edge (three (3) to six (6) feet back from the edge of road for the width of the approach). It is desirable to pave the approach to the right-of-way line when the road is reconstructed. State maintains to the right-of-way line. (3-30-01)
- d. Gravel private approach. The permittee maintains beyond the wedge. (3-30-01)
- e. Gravel turnouts. State maintains turnouts, other than mailbox turnouts, to the right-of-way line. The permittee maintains mailbox turnouts. (3-30-01)
- f. Maintenance of all other encroachments shall be the responsibility of the permittee. (3-30-01)

**101. -- 199. (RESERVED)**

**200. APPLICATIONS AND PERMITS.**

**01. Required.** To help preserve the highways as constructed and provide responsible growth where allowed, any individual, business, or other entity planning to add, modify, change use, relocate, maintain, or remove an encroachment on the state highway or use highway right-of-way for any purpose other than normal travel, shall obtain a permit to use state highway right-of-way. Encroachment permits approved by the Department are required for private and public approaches (driveways and streets), utilities and other miscellaneous encroachments. ~~(3-15-02)~~(10-1-12)T

**02. Work Prior to Approval.** No activities shall be allowed on State highway rights-of-way until an approved permit has been issued by the Department or a delegated local highway agency. In an emergency, that effects highway operations and motorist safety, approval may be given by the Department or a delegated highway agency in advance of processing the permit. (3-30-01)

**03. Local Highway Agency Authority.** The department may delegate authority to a local highway agency to issue permits to use state highway rights-of-way if adequate local ordinances are in place and are enforceable. The Department shall retain final approval for all permits issued by a local highway agency on the State Highway System. (3-15-02)

**04. Administration.** Permitting process shall be administered by the Department or their delegated representative, within the ~~its~~ representative's respective jurisdiction. Department District offices are located in Coeur d'Alene, Lewiston, Boise, Shoshone, Pocatello and Rigby. ~~(3-30-01)~~(10-1-12)T

**05. Application Forms.** All applications to use State highway right-of-way shall be made on approved Department forms. (3-30-01)

**06. Applicant to Be Informed.** Applicants shall be informed of Department policies and regulations concerning encroachments. ~~and~~ (10-1-12)T

**07. Payment for Impacted Highway Features.** Applicants shall pay for any changes or adjustments of highway features or fixtures brought about by actions, operations or requirements caused by the applicant. ~~(3-30-01)~~(10-1-12)T

**078. Encroachment Conflicts.** Conflicts between proposed encroachments and highway maintenance or construction projects, utilities or other encroachments shall be resolved before an application is submitted approved. ~~(3-30-01)~~(10-1-12)T

**089. Review Process.** The review process shall commence on the day the applicant submits the signed ~~the~~ application and makes payment of the initial application fee(s). If the Department determines there is insufficient documentation to process the application, the process will be placed on hold until such documentation has been received. All applications for encroachment permits shall be reviewed and evaluated for current access control requirements, deed restrictions, safety and capacity requirements, design and location standards, or an approved variance of these standards, environmental impacts, location conflicts, long-range planning goals, and the need for an

appraisal. A time table for the review process is available at the Idaho Transportation Department Headquarters Office or any *Highway* District Office. ~~(3-15-02)~~(10-1-12)T

~~09~~**10. Department Held Harmless.** In accepting an approved permit, the permittee, their successors and assigns, shall agree to hold harmless and defend, regardless of outcome, the state from the expenses of and against all suits or claims, including costs, expenses and attorney fees that may be incurred by reason of any act or omission, neglect or misconduct of the permittee or its contractor in the design, construction, maintenance or operation of the encroachment. (3-30-01)

~~10~~**1. Permit Requirements.** All permits shall specify approach location and use, and be accompanied by approved traffic control plans, design details and specifications that address dust control, site reclamation, environmental protection and work site safety. The applicant shall be required to submit construction plans stamped by an engineer licensed in the state of Idaho to the Department for approval. ~~(3-15-02)~~(10-1-12)T

~~11~~**2. Void Application.** Once an application is submitted, if the permitting process is not completed within one (1) year as a result of inactivity on the applicant's part, the application shall be considered void. (3-30-01)

~~12~~**3. Denial of Application.** Applications for encroachments not allowed shall be verbally denied. If the applicant insists on proceeding with the application, the non-refundable fee shall be accepted and a permit denial issued by certified letter. Upon receipt of the denial letter, the applicant can appeal the Department's action. (3-30-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**300. GENERAL REGULATIONS FOR APPROACHES.**

**01. Required.** All new or additional approaches, or the modification in design or use, relocation or removal of existing approaches require an approved State highway right-of-way use permit and shall meet all access control requirements that correspond to ~~the current functional classification for~~ the state highway being affected. ~~(3-30-01)~~(10-1-12)T

**02. General.** Requests for approaches shall be reviewed and considered for approval based on the needs of the total development, regardless of the number of individual parcels it contains. (3-30-01)

**03. Joint-Use Approach.** Only an owner of property abutting the state highway right-of-way, or their designated representative, can apply for access. Applications for a joint-use approach that serves two (2) or more abutting properties sharing common boundary lines shall be accompanied by a legal recorded joint-use access agreement and shall be signed by all deeded owners or authorized representatives. (3-30-01)

~~**04. Deed Requirement.** Relocation of existing approaches and additional approaches shall require a new exchange deed showing the access by highway station, approach width and use type. Removed approaches shall require a correction deed that references the original legal document of title in which access rights were removed. (3-30-01)~~

~~**05. Appraisals.** An appraisal shall be required on all properties when existing documentation verifies State acquisition of access control. (3-30-01)~~

**064. Applicable Standards.** The location, design, and construction of all approaches shall comply with Department standards. Information regarding applicable standards is available at Department headquarters and all District offices listed in Subsection 003.01. (3-30-01)

**075. Approach Locations.** Approaches shall be located where the highway alignment and profile meet approved geometric standards, where they do not create undue interference with or hazard to the free movement of normal highway or pedestrian traffic, and where they do not restrict or interfere with the placement or proper function

of traffic control signs, signals, lighting or other devices. (3-30-01)

~~08. **Number of Approaches.** All approaches shall be designed to adequately serve the needs of the property and the anticipated traffic volumes. Normally not more than two (2) approaches should be provided to any single property tract or business establishment frontage. (3-30-01)~~

**09.6. Denial of Approach Application.** Failure to comply with these requirements may be sufficient cause for the Department to deny an approach application, prohibit specific approach usage, or remove an existing approach. (3-30-01)

~~10. **Type I Encroachment.** The following types of encroachments may be permitted within a Type I access control: (3-30-01)~~

~~a. Change in use from Farm/Field access to Single Family Residential access or from Single Family Residential access to Farm/Field access. (3-30-01)~~

~~b. Change in use from Commercial or Multiple Family Residential access to Single Family Residential or Farm/Field access. (3-30-01)~~

~~c. Relocation of approaches not specified within a deed by specific highway stationing. (3-30-01)~~

~~d. Combining two (2) or more deeded approaches into one (1) joint use approach, if the use will be for Single Family Residential or Farm/Field access and both existing approaches are not specified on the deeds by specific highway stationing. (3-30-01)~~

~~e. Construction of a new approach. (3-30-01)~~

~~f. Construction of additional approaches. (3-30-01)~~

~~g. Modification in design of an existing approach. (3-30-01)~~

~~h. Removal of an existing approach. (3-30-01)~~

~~i. Utilities. (3-30-01)~~

~~j. All other miscellaneous encroachments. (3-30-01)~~

~~11. **Type II Through Type V Encroachment.** The following types of encroachments may be processed within Type II through V access control: (3-30-01)~~

~~a. Change in use from Farm/Field access to Multiple Family Residential access or from Farm/Field access to Commercial access. (3-30-01)~~

~~b. Change in use from Single Family Residential access to Multiple Family Residential access or from Single Family Residential access to Commercial access. (3-30-01)~~

~~c. Combining two (2) or more deeded approaches into one (1) joint use approach both existing approaches are specified on the deeds by specific highway stationing. (3-30-01)~~

~~d. Change in location of an approach specified on a deed by specific highway stationing. (3-30-01)~~

~~e. Construction of a new approach. (3-30-01)~~

~~f. Construction of additional approaches. (3-30-01)~~

~~g. Modification in design of an existing approach. (3-30-01)~~



- ~~h-~~ *Removal of an existing approach.* (3-30-01)
- ~~i-~~ *Utilities.* (3-30-01)
- ~~j-~~ *All other miscellaneous encroachments.* (3-30-01)
- ~~k-~~ *All cases where access control has been acquired by the State.* (3-30-01)

~~1207.~~ **New Approaches in Highway Construction.** Applications for an encroachment located within a state highway construction project shall be processed by the Department. ~~(3-30-01)~~(10-1-12)T

~~1308.~~ **Modification of Approaches by Department.** The Department reserves the right to make any modifications, additions, repairs, relocations, or removals to any approach or its appurtenances within the highway right-of-way, when necessary for maintenance, rehabilitation, reconstruction or relocation of the highway and/or to provide proper protection of life and property on, or adjacent to, the highway. (3-30-01)

~~1409.~~ **Modification of Approaches by Permittee.** Modifications of approach use, construction, or design shall include but not be limited to width, grade, surface type, landscaping, and drainage. Change in use of an approach shall include but not be limited to changes from a farm approach to a residential or commercial approach, or changes from a single family residential approach to a multiple family residential or commercial approach. Such modifications by the permittee require Department approval. ~~(3-30-01)~~(10-1-12)T

**~~301.~~ APPROACHES FOR MAJOR DEVELOPMENTS.**

~~01.~~ **~~Transportation Impact Study (TIS).~~** ~~To ensure that the State Highway System can satisfactorily accommodate proposed development, a Transportation impact study may be required. A TIS shall be required when a new or an expanded existing development has direct access to the State Highway System and adds a minimal number of trips as described below:~~ (3-30-01)

~~a.~~ A "full" TIS shall be required for developments that will generate one hundred (100) or more new trips per hour (total two (2) way traffic) during the highway's peak hour or when the total added volume will equal or exceed one thousand (1,000) vehicles per day (a lesser volume if required by the Department). (3-30-01)

~~b.~~ A "minor" TIS is required for developments that will generate between twenty five (25) and ninety nine (99) new peak hour trips or will add from two hundred fifty (250) to nine hundred ninety nine (999) vehicles per day. (3-30-01)

~~e.~~ A TIS shall document the extent of the impact of the proposed development on the State Highway System, including additional trips, resulting level of service during AM and PM peaks, and the need for auxiliary lanes or other special capacity or safety features. Any required changes in traffic control, land use, access, pedestrian, or bicycle usage shall also be addressed. (3-30-01)

~~02.~~ **~~Authority.~~** ~~The Department shall make the final decision regarding TIS requirements.~~ (3-30-01)

~~03.~~ **~~Required.~~** ~~The developer shall provide and pay for the TIS, and the Department will review the study.~~ (3-30-01)

**~~3021.~~ -- 399. (RESERVED)**

**400. LOCATION AND DESIGN STANDARDS FOR APPROACHES.**

**01. Required.** Location, design, construction and operations of all approaches shall comply with current Department geometric standards and design principles. (3-30-01)

**02. Guidelines.** The following access management guidelines shall be considered on all approach applications: (3-30-01)

- a. Design approaches for current and future property access requirements; and (3-30-01)
- b. Reduce conflicts associated access points through the application of channelization, auxiliary lanes, joint-use approaches, frontage and other local roads, restricted on-street parking and off-street traffic circulation. (3-30-01)

**03. Signal and Approach Spacing.** In order to maintain system capacity, safety and efficiency, maximize signal progression and minimize delays to the traveling public, all approaches and signals shall be spaced in accordance with the following standards: ~~(3-30-01)~~(10-1-12)T

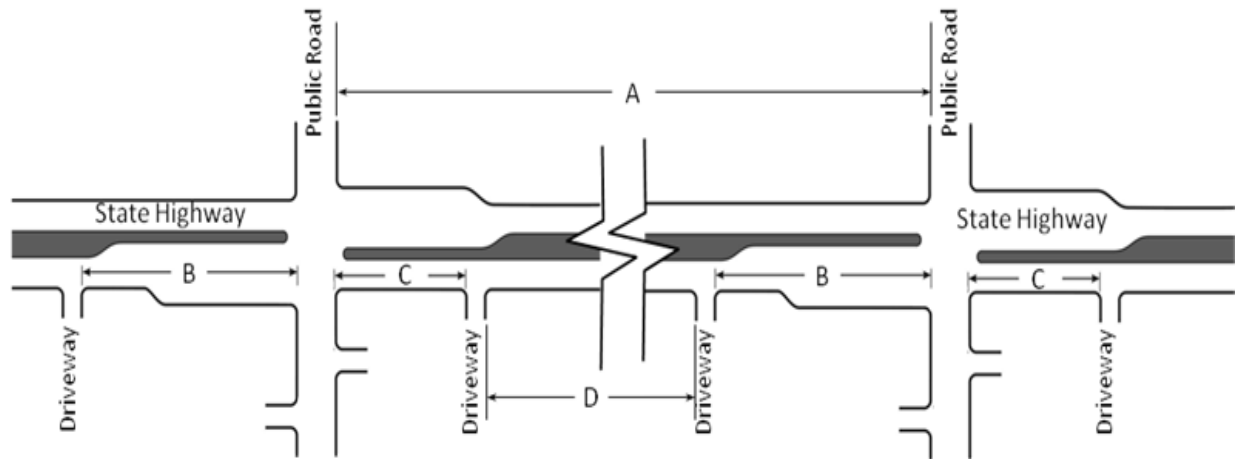
- a. All traffic signal locations shall meet Department signal warrant requirements and a signal operational analysis; (3-30-01)
- b. Location preference shall be given to State highways that meet or may be reasonably expected to meet signal warrants within five (5) years; and (3-30-01)
- c. Minimum recommended distances between approaches and signals are as follows:

ACCESS TYPE	URBAN/RURAL	TYPE	APPROACHES		SIGNALS	FRONTAGE ROADS
			Intersection Spacing	Approach Spacing	Signal Spacing	
<b>I</b>	<b>Urban Sections Shall Be Upgraded To Type II Or Greater</b>					
	R	At-grade	.4 km (.25 miles)	91.4 m (300 feet)	.8 km (.5 miles)	.4 km (.25 miles)
<b>II</b>	U	At-grade	201.2 m (660 feet)	45.7 m (150 feet)	.4 km (.25 miles)	.4 km (.25 miles)
	R	At-grade	.4 km (.25 miles)	.15 km (500 feet)	.8 km (.5 miles)	.4 km (.25 miles)
<b>III</b>	U	At-grade/ Interchange	.4 km (.25 miles)	91.4 m (300 feet)	.8 km (.5 miles)	.4 km (.25 miles)
	R	At-grade/ Interchange	.8 km (.5 miles)	.3 km (1000 feet)	.8 km (.5 miles)	.4 km (.25 miles)
<b>IV</b>	U	At-grade/ Interchange	.8 km (.5 miles)	NA	.8 km (.5 miles)	.4 km (.25 miles)
	R	At-grade/ Interchange	1.6 km (1 mile)	NA	1.6 km (1 mile)	.4 km (.25 miles)
<b>V</b>	U	Interchange	1.6 km (1 mile)	NA	None	NA
	R	Interchange	4.8 km (3 miles)	NA	None	NA
	R	At-grade	.4 km (.25 miles)	.15 km (500 feet)	.8 km (.5 miles)	.4 km (.25 miles)

<b>TABLE 1 – ACCESS SPACING*</b>						
<b>HIGHWAY TYPE</b>	<b>AREA TYPE</b>	<b>Signalized Road Spacing</b>	<b>Public Road Spacing (A)</b>	<b>Driveway Distance Upstream From Public Road Intersection (B)</b>	<b>Driveway Distance Downstream From Unsignalized Public Road Intersection (C)</b>	<b>Distance Between Unsignalized Accesses Other Than Public Roads (D)</b>
<b>Interstate</b>	<b>All</b>	<u>Accessible only by interchanges (ramps) and requires approval by Idaho Transportation Board and Federal Highway Administration.</u>				
<b>Statewide Route</b>	<b>Rural</b>	<u>5,280 ft</u>	<u>5,280 ft</u>	<u>1,000 ft</u>	<u>650 ft</u>	<u>650 ft</u>
	<b>Transitional</b>	<u>5,280 ft</u>	<u>2,640 ft</u>	<u>760 ft</u>	<u>500 ft</u>	<u>500 ft</u>
	<b>Urban &gt;35 mph</b>	<u>2,640 ft</u>	<u>1,320 ft</u>	<u>790 ft</u>	<u>500 ft</u>	<u>500 ft</u>
	<b>Urban ≤35 mph</b>	<u>2,640 ft</u>	<u>1,320 ft</u>	<u>790 ft</u>	<u>250 ft**</u>	<u>250 ft**</u>
<b>Regional Route</b>	<b>Rural</b>	<u>5,280 ft</u>	<u>2,640 ft</u>	<u>1,000 ft</u>	<u>650 ft</u>	<u>650 ft</u>
	<b>Transitional</b>	<u>2,640 ft</u>	<u>1,320 ft</u>	<u>690 ft</u>	<u>360 ft**</u>	<u>360 ft**</u>
	<b>Urban &gt;35 mph</b>	<u>2,640 ft</u>	<u>660 ft</u>	<u>660 ft</u>	<u>360 ft**</u>	<u>360 ft**</u>
	<b>Urban ≤35 mph</b>	<u>2,640 ft</u>	<u>660 ft</u>	<u>660 ft</u>	<u>250 ft**</u>	<u>250 ft**</u>
<b>District Route</b>	<b>Rural</b>	<u>2,640 ft</u>	<u>1,320 ft</u>	<u>760 ft</u>	<u>500 ft</u>	<u>500 ft</u>
	<b>Transitional</b>	<u>2,640 ft</u>	<u>660 ft</u>	<u>660 ft</u>	<u>360 ft**</u>	<u>360 ft**</u>
	<b>Urban &gt;35 mph</b>	<u>1,320 ft</u>	<u>660 ft</u>	<u>660 ft</u>	<u>360 ft**</u>	<u>360 ft**</u>
	<b>Urban ≤35 mph</b>	<u>1,320 ft</u>	<u>660 ft</u>	<u>660 ft</u>	<u>250 ft**</u>	<u>250 ft**</u>
*Distances in table are minimums based on optimal operational and safety conditions such as adequate sight distance and level grade. Definitions of spacing designated by (A), (B), (C), and (D) are represented on Figure 1.						
** Where the public road intersection or private access intersection is signalized, the distances in the table are for driveways restricted to right-in/right-out movements only. For unrestricted driveways the minimum distance shall be 500 feet from a signalized intersection.						

(3-30-01)(10-1-12)T

Figure 1:



(10-1-12)T

**d.** The District Engineer shall have the authority to deny an encroachment permit or require the applicant to provide a Traffic Impact Study when an on-site review indicates that the optimal conditions (such as sight distance and queue length) assumed in Table 1 do not exist, and that operational or safety problems may result from the encroachment spacing. (10-1-12)T

**e.** The District Engineer shall have the authority to approve a decrease in the minimum access spacing distances set forth in Table 1, provided that the basis for any exception is justified and documented. The basis for the exception may include overriding economic opportunity considerations. For any exception that would result in a decrease in access spacing of more than ten percent (10%) of the distances set forth in Table 1, a Traffic Impact Study will be required in order to determine whether auxiliary lanes or other appropriate mitigation must be included in the permit's conditions. (10-1-12)T

**f.** Unless the requirement is waived by the District Engineer, a Traffic Impact Study shall also be required when a new or expanded development seeks direct access to a state highway, and at full build out will generate one hundred (100) or more new trips during the peak hour, the new volume of trips will equal or exceed one thousand (1000) vehicles per day, or the new vehicle volume will result from development that equals or exceeds the threshold values in Table 2. If the District Engineer waives the requirement for a Traffic Impact Study, the basis for such waiver shall be justified and documented. (10-1-12)T

**g.** When required, the Traffic Impact Study shall document access needs and impacts and whether any highway modifications are necessary to accommodate the new traffic volumes generated by the development. Such modifications could include, for example, turn lanes, additional through lanes, acceleration or deceleration lanes, medians, traffic signals, removal and/or consolidation of existing approaches, approaches limited to right-in/right-out access only, etc. (10-1-12)T

**h.** If a District Engineer denies an encroachment permit application and the denial is appealed to the board, the board or its delegate shall have the authority to approve exceptions to the access and signal spacing distances in Table 1 if, in the judgment of the board, overriding economic considerations cause the exceptions to be in the best interests of the public. (10-1-12)T

<u>Table 2</u>	
<u>LAND USE TYPE</u>	<u>THRESHOLD VALUE</u>
<u>Residential</u>	<u>100 Dwelling Units</u>
<u>Retail</u>	<u>35,000 square feet</u>
<u>Office</u>	<u>50,000 square feet</u>
<u>Industrial</u>	<u>70,000 square feet</u>
<u>Lodging</u>	<u>100 rooms</u>
<u>School (K-12)</u>	<u>All (Sections 67-6508 &amp; 67-6519, Idaho Code)</u>

(10-1-12)T

**04. Corner Clearance.** (3-30-01)

**a.** Approaches should be located as far as practical from intersections: to preserve visibility at the intersection, to permit safe vehicle movement, and to accommodate the installation of traffic signs, signals and lighting where required. (3-30-01)

**b.** Approach transitions or flares shall not encroach upon curbs or pavement edges forming the corner radii of the intersection. (3-30-01)

**c.** Minimum corner clearances between signalized and unsignalized urban and rural intersections shall comply with current Department standards. (3-30-01)

**05. Approach Alignment.** Whenever possible, all new or relocated approaches shall intersect the state highway at right angles and shall be aligned on centerline with existing approaches to facilitate highway safety and the development and use of turn lanes and/or signals. Approach skew angles shall be in conformance with current Department standards. (3-30-01)

**06. Width and Radius.** (3-30-01)

**a.** An approach shall be wide enough to properly serve the anticipated type and volume of traffic. Minimum widths should be used only when space limitations apply. (3-30-01)

**b.** An approach that is adjacent to a public alley may include the alley as part of the approach if approved by the local jurisdiction, however, the width of the combined approach shall not exceed ~~twelve point two (12.2) meters~~ forty (40) feet. ~~(3-30-01)~~(10-1-12)T

**c.** Commercial approaches with volumes exceeding fifty (50) vehicles per hour during a total of any four (4) hours per day should be designed to public road standards. (3-30-01)

**d.** A Boulevard Approach may be required to improve operation and/or aesthetics of commercial approaches and some public highways, when warranted, by a combination of vehicle length and higher traffic volumes. The approach shall be designed to serve the traffic with a right-turn lane, a left-turn lane, a median, and one (1) or more entrance lanes. (3-30-01)

**e.** Minimum and maximum recommended approach widths and radii are as follows:

APPROACH USE	< 35 MPH		≥ 35 MPH		RADII	
	Minimum	Maximum	Minimum	Maximum	Minimum	Maximum
Single Residential, Farmyard, Field	<del>3.7 m</del> (12ft)	<del>12.2 m</del> (40ft)	<del>6.1 m</del> (20ft)	<del>12.2 m</del> (40ft)	<del>6.1 m</del> (20ft)	<del>9.1 m</del> (30ft)
Multiple Residential	<del>8.5 m</del> (28ft)	<del>12.2 m</del> (40ft)	<del>8.5 m</del> (28ft)	<del>12.2 m</del> (40ft)	<del>6.1 m</del> (20ft)	<del>9.1 m</del> (30ft)
Commercial (One-Way)	<del>4.6 m</del> (15ft)	<del>9.1 m</del> (30ft)	<del>6.1 m</del> (20ft)	<del>9.1 m</del> (30ft)	<del>9.1 m</del> (30ft)	<del>12.2 m</del> (40ft)
Commercial (Two-Way)	<del>7.6 m</del> (25ft)	<del>12.2 m</del> (40ft)	<del>7.6 m</del> (25ft)	<del>12.2 m</del> (40ft)	<del>9.1 m</del> (30ft)	<del>12.2 m</del> (40ft)
Boulevard Approach	<del>25.6 m</del> (84ft)	<del>25.6 m</del> (84ft)	<del>25.6 m</del> (84ft)	<del>25.6 m</del> (84ft)	Contact Department	
Joint-Use Residential/Farm	<del>7.6 m</del> (25ft)	<del>12.2 m</del> (40ft)	<del>7.6 m</del> (25ft)	<del>12.2 m</del> (40ft)	<del>6.1 m</del> (20ft)	<del>9.1 m</del> (30ft)
Joint-Use Commercial	<del>3.7 m</del> (12ft)	<del>12.2 m</del> (40ft)	<del>6.1 m</del> (20ft)	<del>12.2 m</del> (40ft)	<del>9.1 m</del> (30ft)	<del>12.2 m</del> (40ft)
Public Highways	<del>8.5 m</del> (28ft)	N/A	<del>8.5 m</del> (28ft)	N/A	<del>9.1 m</del> (30ft)	<del>15.2 m</del> (50ft)

~~(3-30-01)~~(10-1-12)T

**07. Property Line Clearance.**

(3-30-01)

**a.** In curbed sections, there shall be a minimum property line clearance of ~~one point two (1.2) meters/~~ six (6) feet to accommodate approach transitions. Approaches shall be constructed so that all approach flares and any extensions of the approach remain within applicant’s property. ~~(3-30-01)~~(10-1-12)T

**b.** In rural or uncurbed sections, property line clearances shall be equal to approach radius. Approaches shall be constructed so that all approach radii remain within applicant’s property. (3-30-01)

**c.** Approach transitions or radii may be allowed to abut the adjacent property line when required for proper utilization of property. Joint-use approaches shall be required whenever property frontage is insufficient to include full width of the approach, including both radii. (3-30-01)

**08. Setback.**

(3-30-01)

**a.** Improvements intended to serve patrons on private property adjacent to state highway right-of-way ~~to serve patrons~~ shall be setback from the highway right-of-way line so that stopping, standing, parking or maneuvering of vehicles on the right-of-way is not necessary. A minimum setback of ~~four point three (4.3) meters/~~ fourteen (14) feet from state highway right-of-way line is recommended, unless a greater minimum is established by an engineering study. When an ordinance requires a certain number of parking spaces per square footage of building, the parking spaces shall not be included within state highway right-of-way. ~~(3-30-01)~~(10-1-12)T

**b.** Traffic movements into and out of a business shall be designed, whenever possible, to utilize existing local roads. Existing approaches along traveled way should serve as exits only from the business onto the state highway. Entrance to the property should be made from a local road. (3-30-01)

**09. Sight Distance.** Any encroachment, including but not limited to hedges, shrubbery, fences, walls, or other sight obstructions of any nature, that constitutes a traffic hazard within the “vision triangle” of vehicle operators at the intersection of roads with other roads, private approaches, alleys, bike or pedestrian paths, or railroad

crossings shall be removed. (3-30-01)

**10. Transitions and Flares.** (3-30-01)

**a.** In curb and gutter sections, the transition connecting the edge of the approach to the curb shall meet minimum Department standards. (3-30-01)

**b.** In sections not having a curb and gutter, approach flares should connect the outside edge of the approach to the outside edge of the roadway shoulders and shall meet minimum Department standards. The approach flare tangent distance should not exceed ~~six point one (6.1) meters~~ twenty (20) feet unless a larger radius is warranted by an engineering study. ~~(3-30-01)~~(10-1-12)T

**c.** The distance between approaches shall be such that the curb approach transition or radii of the one (1) approach does not encroach upon the transition or radii of the adjacent approach. (3-30-01)

**11. Grade.** (3-30-01)

**a.** If the maximum allowable slope is not great enough to bring the approach to the level of the sidewalk or back of curb, a depressed sidewalk should be installed, when required. If sidewalks exist, the connection between the original sidewalk and the depressed sidewalk shall be made through a transition area with a slope no steeper than ~~one to twelve~~ horizontal to one vertical (12:1) from the longitudinal grade of the original sidewalk. All new curbs or sidewalks should be constructed to the line and grade of the existing curb or sidewalk with every effort to construct a sidewalk that is uniformly graded and free of dips. ~~(3-30-01)~~(10-1-12)T

**b.** To accommodate emergency service vehicles, the Department recommends a maximum approach grade of plus or minus ten percent ( $\pm 10\%$ ). (3-30-01)

**12. Border Area.** (3-30-01)

**a.** Border area work (including grading, seeding and landscaping) shall insure that adequate sight distance, proper drainage, desirable slopes for maintenance operations, and a pleasing appearance are provided. The border area shall be free of encroachments and designed as needed to prevent vehicular use through the incorporation of appropriate methods such as ditching, special grading, use of concrete or bituminous curbs, fencing, guard rail, and guide posts. The design or devices should not impair adequate sight distance or constitute a hazard to pedestrians, bicycles, or vehicles. (3-30-01)

**b.** The maximum slope beyond the outside edge of shoulder, back of curb, or back of sidewalk to the right-of-way line shall meet minimum Department standards. The creation of ponds, pools, or drainage/evaporation swales within the highway right-of-way shall be prohibited. (3-30-01)

**13. Drainage.** (3-30-01)

**a.** All approaches shall be graded so that private properties abutting the highway right-of-way do not drain onto the traveled way, do not impair the drainage within the right-of-way, alter the stability of the roadway subgrade or materially alter the drainage of areas adjacent to the right-of-way. Post-development drainage flows shall not exceed predevelopment drainage flows. (3-30-01)

**b.** Culverts and drop inlets shall be installed where required and shall be the type and size specified by the Department. Where the border area is regraded, landscaped or reclaimed (seeded), it shall have sufficient slope, ditches, culverts, and drop inlets for adequate drainage. Slopes, where practical, should be a ~~one to six (1:6)~~ horizontal-to-one vertical (6:1) maximum. ~~(3-30-01)~~(10-1-12)T

**14. Base and Surfacing.** (3-30-01)

**a.** It shall be the responsibility of the permittee to supply, place and properly compact the approach fill and base material. All base and surfacing materials and compaction requirements shall meet minimum Department design and construction standards. (3-30-01)

- b. All rural private, commercial and public approaches shall be paved to the right-of-way line or to the back of the approach radius. Farmyard and field gravel approaches that are occasionally used shall be paved a minimum of ~~one point five (1.5) meters~~ five (5) feet from the edge of pavement. ~~(3-30-01)~~(10-1-12)T
- c. In curb and gutter areas, approaches shall be paved to the right-of-way line. (3-30-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**402. AUXILIARY LANES.**

Review Required. Reviews shall be conducted to determine the need to provide turn lanes, deceleration lanes and acceleration lanes on the state highway prior to issuing an approach permit. Consideration of auxiliary lanes shall meet the following conditions: (3-30-01)

**01. Traffic Engineering Study.** A ~~traffic~~ engineering study shall be made that considers highway operating speed, traffic volumes, projected turning movement volumes, availability of passing opportunities, sight distance, and collision history. ~~(3-30-01)~~(10-1-12)T

**02. Auxiliary Lanes to Enhance Roadside Business.** Auxiliary lanes shall not be constructed to enhance a new roadside business, unless the applicant is willing to pay the full cost. (3-30-01)

**03. Auxiliary Lanes Required by Planned Development.** Auxiliary lanes required as a result of a planned development, shall be paid for by the developer. When the need for an auxiliary lane exists prior to an application for a planned development, the developer may not be required to pay for the lane unless such construction precedes the Department's construction schedule. (3-30-01)

**403. -- 499. (RESERVED)**

**500. LOCATION AND DESIGN STANDARDS FOR UTILITIES.**

**01. Approved Permit Required.** An approved right-of-way encroachment permit shall be required for all utility encroachments, including new utility installation and the relocation, maintenance, modification, or removal of existing utility facilities prior to the initiation of any work within the state highway right-of-way. (3-30-01)

**02. Utility Locations.** Final utility locations shall be identified on the appropriate roadway and bridge plans. (3-30-01)

**03. Interstate Highways.** ~~As addressed in the 1996 Telecommunications Act,~~ longitudinal placement of telecommunication utilities in ~~areas of Type V access control (any Interstate), as addressed in the 1996 Telecommunications Act,~~ right-of-way shall require a permit approved by the Department for the installation of utilities. Longitudinal placement of all other utilities in ~~areas of Type V access control (Interstate)~~ right-of-way shall require a utility permit approved by both the Department and the FHWA. ~~(3-15-02)~~(10-1-12)T

**04. Utility Maintenance and Emergency Repair.** Right-of-way encroachment permits, approved annually by the Department, shall be required for all maintenance or emergency repairs of utility facilities. The utility shall notify the Department in advance of any work that affects the traveling public. (3-15-02)

**05. Conduits Under the Roadway.** (12-26-90)

a. Conduits crossing under highways that carry utility structures including, but not limited to, water, sewage, chemicals, electrical wire, and communications cables, shall be installed by jacking, driving or boring unless trenching can be justified. Acceptable justification would only be poor soil conditions, such as rock or boulders, inadequate room for a boring pit, or conflicts with other utility lines which cannot be located accurately (gas lines, multiple telephone conduits). If gravel or boulders prevent boring or jacking on the first attempt, at least two (2) other



documented attempts should be made at different locations before contacting the District about an alternate installation method, unless the utility can provide documentation from a qualified agency or engineer that indicates the strata is not conducive to boring, driving or jacking. Normally installation of conduit ~~point six (0.6) meters/~~ twenty-four (24) inches or less outside diameter should be attempted by jacking, driving or boring before consideration of trenching as an alternative. ~~(3-30-01)(10-1-12)T~~

**b.** The applicant is required to submit for review and approval, a set of construction plans stamped by an engineer licensed in the state of Idaho. The plans shall show all details on casing, conduits, bulkheads and placement, vertical and horizontal dimensions of the pit and shoring, method of installing the conduit, drainage, void filling, and traffic control devices. Sluicing or jetting shall not be allowed. If required by the engineer, casings should be installed from highway right-of-way line to highway right-of-way line to allow for servicing of the utility facility with minimal disruption to traffic flows. Casings should be installed wherever feasible to allow for placement of multiple conduits. (3-15-02)

**c.** Conduits under interstate highways shall not be installed by cutting through the pavement under any circumstance. (3-30-01)

**06. Conduits Attached to Structure.** Conduits attached to any structure shall meet the following requirements: (3-30-01)

**a.** A set of construction plans showing all details and calculations of a crossing or proposed attachments, stamped by an engineer licensed in the state of Idaho, shall be submitted to the Department for review and approval at the time of permit application. A copy of the existing structure plans shall also be submitted that are marked to show the proposed structure modifications. (3-30-01)

**b.** Reinforcement shall be located prior to the placement of threaded inserts to suspend utilities using a method approved by the Department. (3-30-01)

**c.** All attaching hardware shall be galvanized or coated as directed by the Department. (3-30-01)

**d.** Bolts for the attachment clamps shall be a minimum of ~~twelve point seven (12.7) mm/~~one-half (1/2) inches in diameter. ~~(3-30-01)(10-1-12)T~~

**e.** Slip joints shall be installed as directed by the Department. (3-30-01)

**f.** Drilling of any bridge structural element shall be prohibited without approval from the Department. (3-30-01)

**g.** Utilities shall be attached to bridges in an interior bay, unless interior attachment is not practical due to the bridge diaphragm or end beam construction. (3-30-01)

**h.** Placing brackets along or around the structure rail is prohibited. (3-30-01)

**i.** The installing utility shall relinquish exclusive rights to future use of a hanger system, once installed. However, the responsibility for required maintenance shall remain with the installing utility until the hanger system is placed into a joint-use system. At that time, the responsibility for maintenance shall become a shared responsibility. (3-30-01)

**j.** A set of “as-built” plans for all conduit or utility crossings and structure attachments shall be submitted to the Department and the local utility locating service with all details of construction within thirty (30) days of the work completion. All “as-built” plans are required to be stamped by an engineer licensed in the state of Idaho. (3-30-01)

**501. -- 599. (RESERVED)**

**600. LOCATION AND DESIGN STANDARDS FOR OTHER ENCROACHMENTS.**

**01. Approved Permit Required.** An approved right-of-way encroachment permit shall be required for all portable objects or signs, memorials, urban improvements, landscaping, farming, irrigation or drainage, mailbox stands or turnouts, recreational parking facilities, park-and-ride lots, school bus turnouts, or structures within the state highway right-of-way other than those authorized or installed by the Department, or those which the government entity deems necessary for regulating, warning, and guiding of traffic. (3-30-01)

**02. Benches, Planters, and Other Urban Structures.** Structures, including protrusions and overhangs, shall be a minimum of ~~point five (0.5) meters~~ eighteen (18) inches behind the face of curb. When a structure is within a sidewalk area, at least ~~one point two (1.2) meters~~ four (4) feet of unobstructed space shall be available for pedestrians. ~~(3-30-01)~~(10-1-12)T

**03. Overhanging Displays, Canopies and Marquees.** In a curb section, encroachments shall not extend closer than ~~point five (0.5) meters~~ eighteen (18) inches behind face of curb. In a non-curb section, encroachments supported by a building shall not extend more than ~~point three (0.3) meters~~ twelve (12) inches into right-of-way. Signs or displays shall be no lower than ~~three point seven (3.7) meters~~ twelve (12) feet above the sidewalk or ground level. Canopies and marquees shall be no lower than ~~two point four (2.4) meters~~ eight (8) feet. ~~(3-30-01)~~(10-1-12)T

**04. Landscaping, Farming and Associated Irrigation.** Repair of landscaping in the state highway right-of-way shall be the responsibility of the permittee, and the Department will not be responsible for, or participate in, any repair or maintenance costs. All requests for landscaping, farming and irrigation shall require a review of current access control records for restrictive covenants. Applications may be approved provided the following conditions are met: (3-30-01)

**a.** Landscaping, farming, and irrigation systems shall maintain the structural integrity of the state highway right-of-way. No undercutting of the present highway fill and ballast section nor ~~shall access to a state highway from~~ unprotected bare soil ~~for access from the State highway shall~~ be allowed. ~~(3-30-01)~~(10-1-12)T

**b.** Unless otherwise specified, the degree of landscaping will be limited to what is necessary to insure that the appearance of the state highway right-of-way is compatible with the appearance of the surrounding area and shall not interfere with public safety and overall maintenance operations. (3-30-01)

**c.** Landscaping, farming, and irrigation systems shall not disturb, obstruct, or add to the normal drainage patterns of the state highway right-of-way. No new ditches shall be constructed without prior approval. (3-30-01)

**d.** Landscaping, farming, and irrigation systems shall not interfere with utility installations, removals, or operations. (3-30-01)

**e.** Provisions shall be established for the responsibility of future maintenance. (3-30-01)

**f.** Only planting of forage plants, grasses, flowers, and shrubs with a mature height not to exceed ~~point nine (0.9) meters~~ three (3) feet will be allowed within the clear zone of the state highway right-of-way. Type and size of grasses, flowers, and shrubs will be determined by the Department. ~~(3-30-01)~~(10-1-12)T

**g.** No trees shall be allowed within the clear zone of the state highway right-of-way. (3-15-02)

**h.** All work within the highway right-of-way shall be required to return the right-of-way to either ~~its~~ original condition or to the requirements of the encroachment permit as approved by the Department. ~~(3-15-02)~~(10-1-12)T

**i.** Irrigation systems shall be no closer than ~~one point five (1.5) meters~~ five (5) feet from the pavement edge and shall be adjusted so water does not cover any portion of the highway pavement. ~~(3-15-02)~~(10-1-12)T

**j.** No grading, excavation or other ground disturbing activities will be performed during rainy periods. If work cannot be avoided during rainy periods, the permittee will install check dams or other approved device(s) or structure(s) in drainage channels and provide a sediment retention basin to avoid discharging sediment

containing runoff into the drainage system, or any wetlands, or water bodies (streams, rivers, lakes and ponds). No work shall be performed in or adjacent to any wetland or water body without providing the Department with copies of the appropriate permits from the Army Corps of Engineers, Idaho Department of Water Resources, and the Idaho Division of Environmental Quality. (3-30-01)

**k.** All areas within the state highway right-of-way disturbed by construction shall be returned to its original condition and reclaimed (re-seeded, fertilized and mulched) as directed by the Department or delegated local highway agency. (3-30-01)

**l.** Appropriate best management practices to temporarily control erosion and resulting sediment shall be used. Typical soil surface protection practices include erosion control blankets, taced mulches of straw, wood fiber, paper fiber, soil amendments, or rock mulch. Typical sediment control practices may include silt fences, fiber wattles, rock check dams, sediment basins/ponds, inlet culvert risers, and inlet rock filters. For further information on best management practices, contact the Department. (3-30-01)

**m.** Travel lanes shall be kept reasonably free of dirt, rocks and other debris resulting from construction or maintenance of landscaping, farming, or irrigation. (3-30-01)

**05. Recreational Parking and Park-and-Ride Lots.** (3-30-01)

**a.** Parking areas shall be designed to safely accommodate an adequate number of parking spaces as determined by the Department. (3-30-01)

**b.** Access points shall be located so that adequate sight distance is maintained for the safety of approaching traffic and so that minimal interference with the normal flow of traffic on the traveled way results. (3-30-01)

**c.** Approaches shall be constructed in accordance with Department standards. (3-15-02)

**d.** Installation of fencing and delineation should be considered to restrict ingress and egress locations and widths. (3-30-01)

**e.** Unrestricted drainage shall be provided and shall comply with Department standards. (3-15-02)

**f.** Construction and maintenance of parking areas, including snow removal shall be the responsibility of the permittee. (3-30-01)

**06. Mailbox Turnouts.** (3-30-01)

**a.** Mailbox turnouts in rural areas may be combined with an adjacent approach or may be independent of the approach. For safety reasons, the mail carrier should be able to stop out of the traveled way whenever possible. The applicant should be required to construct a mailbox turnout at the same time a mailbox is installed. (3-30-01)

**b.** Mailbox turnouts and mailbox supports shall be constructed in accordance with Department standards. The box-to-post attachments shall resist separation when struck by a vehicle. No massive metal, concrete, stone or other hazardous supports shall be allowed. Owners of mailboxes that do not meet minimum installation requirements shall be notified that correction is required. (3-15-02)

**07. School Bus Turnouts.** (3-30-01)

**a.** School bus turnouts shall be constructed with sufficient length and width to accommodate bus length and turning maneuvers as determined by the Department. (3-30-01)

**b.** Turnouts shall be located so adequate sight distance is maintained for the safety of approaching traffic and so that minimal interference with the normal flow of traffic on the traveled way results. (3-30-01)

**c.** All permitted school bus turnouts shall include approved advance warning signs installed at

Department expense. (3-30-01)

**601. -- 699. (RESERVED)**

**700. APPLICATION FEES.**

**01. Fee Administration.** Fees for applications for permits shall be based on the Department’s cost to produce the permit and administer the program. Fees for permits are not refundable in the event of denial of the permit or in the event the permittee fails to comply with the permit. Applications shall not be processed until all applicable permit fees are received. (3-13-02)

**02. Fee Schedule.** The permit application fees shall be as follows: (3-13-02)

**a.** Approaches ~~and Other Encroachments~~:

<u>Land Use Category</u>	<u>Permit Application Fee</u>
<u>Residential, &lt; 100 units (includes farm and field approaches)</u>	<u>\$50</u>
<u>Residential, ≥ 100 units</u>	<u>\$100</u>
<u>Retail, &lt; 35,000 sq. ft.</u>	<u>\$50</u>
<u>Retail, ≥ 35,000 sq. ft.</u>	<u>\$100</u>
<u>Office, &lt; 50,000 sq. ft.</u>	<u>\$50</u>
<u>Office, ≥ 50,000 sq. ft.</u>	<u>\$100</u>
<u>Industrial, &lt; 70,000 sq.ft.</u>	<u>\$50</u>
<u>Industrial, ≥ 70,000 sq.ft.</u>	<u>\$100</u>
<u>Lodging, &lt; 100 rooms</u>	<u>\$50</u>
<u>Lodging, ≥ 100 rooms</u>	<u>\$100</u>
<u>School (K-12)</u>	<u>\$100</u>

~~(3-13-02)~~(10-1-12)T

- ~~i. Farm or Field, Type I Access Control, fifty dollars (\$50); (3-13-02)~~
- ~~ii. Farm or Field, Type II-IV Access Control, seventy five dollars (\$75); (3-13-02)~~
- ~~iii. Single Family Residential, Type I Access Control, fifty dollars (\$50); (3-13-02)~~
- ~~iv. Single Family Residential, Type II-IV Access Control, seventy five dollars (\$75); (3-13-02)~~
- ~~v. Multiple Family Residential, Type I Access Control, fifty dollars (\$50); (3-13-02)~~
- ~~vi. Multiple Family Residential, Type II-IV Access Control, seventy five dollars (\$75); (3-13-02)~~
- ~~vii. Subdivision, Type I Access Control (No TIS Required), fifty dollars (\$50); (3-13-02)~~
- ~~viii. Subdivision, Type I Access Control (TIS Required), seventy five dollars (\$75); (3-13-02)~~
- ~~ix. Subdivision, Type II-IV Access Control (No TIS Required), seventy five dollars (\$75); (3-13-02)~~
- ~~x. Subdivision, Type II-IV Access Control (TIS Required), one hundred dollars (\$100); (3-13-02)~~

- ~~xi. Commercial, Type I Access Control (No TIS Required), fifty dollars (\$50); (3-13-02)~~
- ~~xii. Commercial, Type I Access Control (TIS Required), seventy-five dollars (\$75); (3-13-02)~~
- ~~xiii. Commercial, Type II-IV Access Control (No TIS Required), seventy-five dollars (\$75); (3-13-02)~~
- ~~xiv. Commercial, Type II-IV Access Control (TIS Required), one hundred dollars (\$100), and (3-13-02)~~
- ~~xv. Other Encroachments, fifty dollars (\$50). (3-13-02)~~
- b. Encroachments other than approaches: fifty dollars (\$50). (10-1-12)T**
- ~~b.c. Utility Permits: (3-13-02)~~
  - ~~i. Non-interstate (~~Type I-IV~~): new, modify, relocate with no prior easement rights, fifty dollars (\$50). (3-13-02)(10-1-12)T~~
  - ~~ii. Interstate (~~Type V~~): fees for the placement of utilities in full control of access (Interstate), will be addressed at the time of application. (3-13-02)(10-1-12)T~~
  - ~~iii. Interstate and non-interstate (~~Type I-V~~): maintenance or emergency repairs with no prior easement rights - No Charge (3-13-02)(10-1-12)T~~
  - ~~iv. Interstate and non-interstate (~~Type I-V~~): new, modify, relocate with prior easement rights within an ITD State highway project) - No Charge. (3-13-02)(10-1-12)T~~
- 03. Miscellaneous Costs.** In addition to the application fee, the Department may require payment of costs associated with the following: (3-30-01)
  - a.** Study or appraisal review; or (3-30-01)
  - b.** Appraisal fees required to establish the value of property for new, additional, modification in design or use, or relocation of approaches or other encroachments in a controlled access highway. (3-13-02)
  - c.** Inspection fees may be charged at the discretion of the District Engineer when substantial inspection time will be required to monitor and accept work done within the right-of-way. This includes wages, travel, subsistence and other expenses incurred. The intent is to recover only Department costs. When the inspection fee is to be assessed, it shall be stipulated under the application's special provisions. Travel time in excess of one (1) hour, a loaded payroll rate, vehicle rental cost, subsistence, and other expenses incurred. If additional inspections are required, the permittee will be billed a flat fee as determined by the Department at the time the permit is issued. (3-30-01)
  - d.** A performance bond may be required of an applicant at the discretion of the Department. The purpose of this bond is to guarantee completion of the work in accordance with the requirements of the permit. The bond amount should be large enough to cover costs to correct potential damage that might be caused by the permittee. The bond shall be executed by a surety company authorized to conduct business in Idaho. (3-30-01)
  - e.** Construction of highway modifications or improvements, including but not limited to signals, illumination, signs, pavement markings, delineation, guardrail, and culverts; (3-30-01)
  - f.** Changes or adjustments made to highway features or fixtures; or (3-30-01)
  - g.** Expenses relating to photocopying highway plans, permits or related documents. (3-30-01)
- 04. Waivers.** Permit fees may be waived and the justification included with the application for:

(3-30-01)

- a. Approaches resulting from right-of-way negotiations that are included in plans and completed during construction of a highway project. (3-30-01)
- b. Government agencies. (3-30-01)
- c. Agricultural uses of the right-of-way as included in the right-of-way agreement. (3-30-01)
- d. Approaches and other encroachments where direct benefit to the Department is gained. (3-30-01)
- e. Utility adjustments or relocations per project utility agreement, or requested by the Department, or utility maintenance and emergency repairs. (3-30-01)

**701. --799. (RESERVED)**

**800. UNAUTHORIZED AND NONSTANDARD ENCROACHMENTS.**

**01. Compliance.** District Engineers shall ensure compliance with all applicable laws and Department policies relating to the removal or correction of unauthorized and non-standard encroachments in accordance with Department rules and policies. (3-30-01)

**02. Prohibition.** Approaches and other encroachments on state highway rights-of-way that are installed without an approved state highway right-of-way permit, or not constructed in accordance with the Department requirements as stated in the permit, or are naturally occurring adjacent to the state highway right-of-way line and create a hazard, are prohibited, may be removed or their use may be suspended until corrective action is taken. The application process shall be immediately initiated when applicable or the encroachment removed when such a permit cannot be approved. (3-30-01)

**03. Nonstandard Encroachment.** When a permitted encroachment does not meet Department standards, the applicant or permittee shall be given one (1) month to upgrade the encroachment to the encroachment standards. Encroachments may be removed by the Department and legal action initiated to collect the removal cost. (Section 40-2319, Idaho Code) The one (1) month period may be shortened if an imminent or immediate threat to the safety of the traveling public is present. Time extensions may be granted by the Department or delegated local highway agency. However, if the permittee does not comply, the permit shall be revoked and the encroachment removed. (3-30-01)

**04. Encroachment Removal.** Any person or entity maintaining an unauthorized encroachment of any kind upon state highway right-of-way shall be served, according to law, with a notice to remove the same. Failure to remove the encroachment within forty-eight (48) hours shall be followed by a certified letter from the Department requesting removal within ten (10) days. If the encroachment is still not removed, the Department shall institute appropriate legal action to have it removed. The Department may take immediate corrective action if an imminent or immediate threat to the safety of the traveling public is present. ~~(3-30-01)~~(10-1-12)T

**05. Liability of Applicant.** The applicant may be held liable for injury or damages caused by the unauthorized or non-standard encroachment. The Department shall make no reimbursement for removal of unauthorized or non-standard encroachments nor shall compensation be made for any losses that may arise from their removal. The Department may initiate legal action to recover costs for the removal of unauthorized or non-standard encroachments. (3-30-01)

## IDAPA 47 - DIVISION OF VOCATIONAL REHABILITATION

### 47.01.01 - RULES OF THE IDAHO DIVISION OF VOCATIONAL REHABILITATION

#### DOCKET NO. 47-0101-1202

#### 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, 33-2301, Idaho Code and the Rehabilitation Act of 1973 and all subsequent Amendments.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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:

Proposed changes incorporate the changes made by the temporary rule published in the April 2012 Administrative Bulletin. The temporary rule changes were made in response to recommendation from Divisions last federal audit. Additional proposed changes are being made in response to a comprehensive review of the policies and procedures of the Division and clarify language regarding the customer appeal and mediation processes as well as the order of selection process and incorporates the updated version, approved by the State Board of Education on August 16, 2012, of the Division of Vocational Rehabilitation Field Service Policy manual by reference.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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. Initial notice was made in the form of the temporary rule published in the April 2012 Idaho Administrative Bulletin, [Volume 12-4, page 16](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The Division of Vocation Rehabilitation outlines specific programs and processes on the access of services in the Division of Vocational Rehabilitation Field Service Manual; due to the specific nature of these processes it is not feasible to include the text within a rule. All documents incorporated by reference are must go through the rule promulgation process to be changed.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jane Donnellan, at (208)287-6477 or [jane.donnellan@vr.idaho.gov](mailto:jane.donnellan@vr.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24<sup>th</sup>, 2012.

DATED this 31st day of August, 2012.

Tracie Bent  
Chief Planning and Policy Officer  
Office of the State Board of Education

650 W State Street  
PO Box 83720, Boise, ID 83720-0037  
(208) 332-1582, fax: (208) 334-2632

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 47-0101-1202**

**004. INCORPORATION BY REFERENCE.**

**01. General.** Unless provided otherwise, any reference in these rules to any document identified in Subsection 004 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. (3-30-01)

**02. Documents Incorporated by Reference.** The following documents are incorporated by reference into these rules: (3-30-01)

**a.** All federal publications through the [Rehabilitation Services Administration](#). (2-17-09)

**b.** Idaho Division of Vocational Rehabilitation Field Services [Policy](#) Manual, ~~2008 June 2012,~~ available for review on the website at <http://www.vr.idaho.gov/>. (~~2-17-09~~)(    )

~~**c.** *Federal State Plan for Vocational Rehabilitation 2008—2010, available for review on the website at <http://www.vr.idaho.gov/>.* (2-17-09)~~

~~**d.** Workforce Investment Act, Public Law 105-220. (5-3-03)~~

~~**e.** Federal Register, Department of Education, 34 CFR Part 361- 363. (2-17-09)~~

~~**f.** The Rehabilitation Act of 1973, as amended. (2-17-09)~~

**03. Availability of Reference Material.** Copies of the documents incorporated by reference into these rules are available at the Central Office, Idaho Division of Vocational Rehabilitation, 650 W. State Street, Room 150, Boise, Idaho 83720, (208) 334-3390 or through access to the internet URL addresses outlined in Subsection 004.02. (2-17-09)

**005. -- 009. (RESERVED)**

**010. DEFINITIONS.**

**01. Authorization to Purchase.** A purchase order issued on behalf of the Division. (5-3-03)

**02. CFR.** Code of Federal Regulations. (7-1-93)

**03. ~~Client/Participant~~ Customer.** Any individual who has applied for or is eligible for Vocational Rehabilitation services. (~~5-3-03~~)(    )

**04. Designated State Agency.** The Idaho State Board of Education. (5-3-03)

**05. Designated State Unit.** The Idaho Division of Vocational Rehabilitation. (7-1-93)

**06. IDVR.** The Idaho Division of Vocational Rehabilitation. (4-5-00)

**07. IPE.** Individualized Plan for Employment. (4-5-00)

**08. Most Significant Disability (MSD).** Meets the criteria as Significant Disability as found in the Rehabilitation Act of 1973, as amended, and defined in 34CFR Part 361.5 (b) 30 and is further defined as: (2-17-09)

**a.** Having a severe physical, mental, cognitive or sensory impairment which seriously limits ~~two~~ **three**



~~(23)~~ or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance or work skills) in terms of an employment outcome; and ~~(5-3-03)~~(\_\_\_\_)

b. Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time. (3-20-04)

**09. Method of Written Notification.** The written notification of findings and conclusions arising from an Informal Dispute Resolution, Mediation, ~~Impartial Due Process Fair~~ Hearing, shall be served to the ~~client customer~~ via the U.S. Postal Service ~~by means of certified mail. Durational requirements for appeals shall commence on the day received by the client as noted by the certified mail records.~~ ~~(5-3-03)~~(\_\_\_\_)

**10. PM.** Policy Memorandum. (5-3-03)

**11. RSA.** Rehabilitation Services Administration, U.S. Department of Education. (5-3-03)

**12. State Administrator.** The Chief Executive Officer of the Idaho Division of Vocational Rehabilitation. (4-5-00)

**13. VRC.** Vocational Rehabilitation Counselor. (5-3-03)

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

**100. CLIENT/PARTICIPANT CUSTOMER APPEALS.**

In accordance with 34 CFR Part 361.57, the ~~client/participant~~ ~~customer~~ appeals process is governed by Section 100 through 103 of these rules and is outlined in the Division's agency Field Services Manual on the website at <http://www.vr.idaho.gov/> that is incorporated by reference into these rules in Subsection 004.02.b. ~~(2-17-09)~~(\_\_\_\_)

**101. INFORMAL APPEALS REVIEW PROCESS.**

The informal ~~administrative~~ review process is an option available to the ~~individual~~ ~~customer~~ as a proven means likely to result in a timely resolution of disagreements. An individual must request an informal ~~administrative~~ review within ~~ten~~ ~~twenty-one~~ ~~(1021)~~ calendar days of the agency notice regarding the provision or denial of services that are in question. The request must be in writing to the regional manager. The request must describe the complaint. In holding an informal ~~administrative~~ review, the regional manager will function as the administrative review officer, ~~and At the customer's request another regional manager may be substituted. The reviewer~~ will be responsible for: ~~(3-29-10)~~(\_\_\_\_)

**01. Advising the Customer.** ~~Advising the customer of his right to have a representative present and encouraging the customer to use the services of CAP.~~ (\_\_\_\_)

~~a02.~~ **Conducting the Review.** Conducting the review within fifteen (15) calendar days following written receipt of a request for such a hearing. ~~Unless an extension is agreed upon by both parties.~~ ~~(3-29-10)~~(\_\_\_\_)

~~b.~~ ~~Advising the individual of their right to have a representative present and encouraging the individual to use the services of CAP.~~ ~~(3-29-10)~~

~~e.~~ ~~Insuring that the review is conducted at a time mutually agreed to by the parties involved that ensures the entire appeals process can be completed within forty five (45) calendar days, unless the parties agree to a specific extension of time.~~ ~~(3-29-10)~~

~~d.~~ ~~When undue delay is caused by the individual in scheduling an administrative review, the individual will be informed that if the review is not conducted within thirty (30) calendar days following the individual's request for an informal administrative review, the individual's request will be viewed by IDVR as invalid.~~ ~~(3-29-10)~~

~~e03.~~ **Documented Effort.** When the ~~individual~~ ~~customer~~ makes a documented effort to utilize CAP or another ~~selected~~ advocate to resolve the dissatisfaction, the time allowed for conducting an ~~administrative~~ ~~informal~~ review will be extended accordingly. ~~(3-29-10)~~(\_\_\_\_)

**f04. Review Location.** Holding the review at a time and place convenient to the *individual customer*, generally at the local IDVR branch office. (3-29-10)( )

**g05. Communication Method.** Providing communication methods for those *individuals customers* who have a sensory impairment. An interpreter will be provided for those *individuals customers* who cannot communicate in English. (3-29-10)( )

**h06. Transportation.** ~~Assuring~~ If needed assure that the *individual customer* is provided transportation to and from the review site. ~~if needed.~~ (3-29-10)( )

**i07. Written Proposal.** The *administrative informal* review officer (regional manager) will attempt to resolve the matter to the satisfaction of the *individual customer*, developing a written *agreement proposal* with the *individual customer* at the conclusion of the appeal process. ~~A copy will be sent to the Administrator, Chief of Field Services, the involved counselor(s) and the counselor's supervisor.~~ The results are binding for the agency unless the *decision proposal* is not permitted by law. The *individual customer* may reject the *findings of the review proposal* and request a *formal appeal known as an Impartial Due Process Hearing* a fair hearing within ten (10) calendar days of the informal review proposal or sixty (60) calendar days of the original agency decision, whichever comes later. (3-29-10)( )

## **102. MEDIATION.**

Mediation is an alternate dispute resolution method available to applicants and eligible customers who have initiated the formal appeals process. ( )

**01. Time Line.** A customer must request mediation within twenty (20) calendar days of the original decision or ten (10) calendar days following the written proposal from the informal review. Mediation is available to a customer when and informal review has not resolved the dispute to the satisfaction of the customer. ( )

**02. Written Request.** Requests for mediation must be made in writing to the chief of field services and must clearly state the reason for dissatisfaction with the decision or results of the informal review. The chief of field services will represent IDVR or assign a member of the administrative or supervisory staff who has not participated in the agency action that created the customer's dissatisfaction. ( )

**03. Participation.** Participation in the mediation process is voluntary on the part of the customer and on the part of IDVR. Either party may reject mediation as an alternate dispute resolution method. Once mediation has been accepted as an alternate dispute resolution method, either party may terminate the mediation process. ( )

**04. Fair Hearing.** Mediation may not be used to deny or delay the customer's right to pursue a fair hearing. Should the customer and/or designated representative select mediation in lieu of a fair hearing the option for a fair hearing will be extended to allow the results of the mediation to be established. Once the final results of the mediation are determined, the customer retains the right to request a fair hearing. ( )

**05. Mediator.** All mediation is conducted by a qualified and impartial mediator who is selected randomly from a list of mediators maintained by IDVR. ( )

**06. Confidentiality.** Mediation discussions are confidential and may not be used as evidence in a fair hearing. A confidentiality agreement will be signed by both parties at the beginning of the mediation process. ( )

**07. Mediation Agreement.** The mediator will develop a written mediation agreement if an agreement between the parties is reached. The agreement must be signed by the customer, the mediator, and the IDVR designated representative. ( )

**08. Cost.** Cost of mediation is paid by IDVR. IDVR is not required to pay for any cost related to the representation of a customer. ( )

## **1023. FORMAL APPEALS FAIR HEARING PROCESS.**

The *formal appeal* fair hearing process is an option available to any *individual customer* who is dissatisfied with any

determination made by personnel of IDVR that affects the provisions of vocational rehabilitation services. A ~~an individual customer~~ may request a fair hearing immediately without having to go through any other appeal steps. A customer may request, or if appropriate may request through the ~~individual's customer's~~ representative, a timely review of the determination. Such request must be made within sixty (60) days of the IDVR ~~case management~~ decision resulting in the initial disagreement or within ten (10) calendar days of the conclusion of the informal review or mediation process, whichever is later. The ~~formal appeal~~ fair hearing process shall include ~~an impartial due process fair~~ hearing by ~~an impartial fair~~ hearing officer (~~FHO~~). (3-29-10)(    )

**a01. Procedure.** A formal fair hearing is a procedure whereby ~~an individual customer~~ who is dissatisfied with any determination concerning the provision or denial of IDVR services or the findings of the ~~administrative~~ informal review or mediation may seek a determination of agency action before ~~an impartial fair~~ hearing officer. (3-29-10)(    )

~~b. The individual must request a hearing within ten (10) calendar days of the agency notice regarding the provision or denial of services based upon the conclusion of the administrative review or mediation. The individual may bypass the informal administrative review or mediation process entirely and go directly to the impartial due process hearing (fair hearing). That process will then commence immediately. (3-29-10)~~

**e02. Written Request.** A request for a fair hearing must be sent in writing to the Chief of Field Services and clearly state the ~~individual's customer's~~ dissatisfaction with the agency's decision. (3-29-10)(    )

**d03. Timeline.** The hearing shall be conducted within sixty (60) calendar days of receipt of the individual's request for review, unless informal resolution is achieved prior to the 60th day, or the parties agree to a specific extension of time. (3-29-10)

**e04. Fair Hearing Officers.** A list of fair hearing officers shall be ~~conducted by an impartial hearing officer selected from the pool of qualified persons~~ identified jointly by the Administrator of IDVR and the State Rehabilitation Council. The fair hearing officer shall be selected from the list by the administrator of IDVR and the customer. (3-29-10)(    )

**f05. Written Report.** The fair hearing officer shall issue a written report of the findings and decision of the hearing within thirty (30) calendar days of the completion of the hearing. (3-29-10)(    )

**g06. Decision.** The decision of the fair hearing officer shall be considered final by the agency. (3-29-10)(    )

**h07. Dispute.** Any party who disagrees with the findings and decisions of ~~an impartial fair~~ hearing officer shall have the right to bring a civil action with respect to the matter in dispute. The action may be brought in any state court of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy. (3-29-10)(    )

~~03. Impartial Due Process Hearing. An individual may request an impartial due process hearing immediately without having to go through other appeal steps. Even if an individual agrees to an informal hearings process, such individual is entitled to a due process hearing within sixty (60) days of the IDVR case management decision that initiated the disagreement, unless both parties agree to an extension. (3-29-10)~~

**04. Mediation.** ~~Mediation is an alternate dispute resolution method available to applicants and eligible individuals who have initiated the formal appeals process. (3-29-10)~~

~~a. An individual must request mediation within ten (10) calendar days of the agency notice regarding the results of the administrative review. Mediation is available to an individual when an administrative review has not resolved the dispute to the satisfaction of the individual. (3-29-10)~~

~~b. A request for mediation must be made in writing to the Chief of Field Services and clearly state the reason for dissatisfaction with the results of the administrative review. The Chief of Field Services will represent IDVR or assign a member of the administrative or supervisory staff who has not participated in agency action that created the individual's dissatisfaction. (3-29-10)~~

~~e. Participation in the mediation process is voluntary on the part of the individual and on the part of IDVR. Either party may reject mediation as an alternate dispute resolution method. Either party, once accepting mediation as an alternate dispute resolution method, may terminate the mediation process. (3-29-10)~~

~~d. Mediation is not used to deny or delay the individual's right to pursue an impartial hearing. Should the individual or designated representatives select mediation in lieu of a formal hearing, the option for the formal hearing will be extended to allow the results of the mediation to be established. After the final results of the mediation are determined, the individual retains the right to request a formal hearing. (3-29-10)~~

~~e. Mediation is conducted by qualified and impartial mediators who are selected randomly from a list of mediators maintained by IDVR. (3-29-10)~~

~~f. Mediation discussions are confidential and may not be used as evidence in a subsequent due process hearing. (3-29-10)~~

~~g. The mediator will develop a written mediation agreement if agreement between the parties is reached, signed by the individual, the mediator and IDVR. (3-29-10)~~

~~h. Cost of mediation is paid by IDVR, although no costs are provided for representation for the individual. (3-29-10)~~

~~1014.~~ -- 199. (RESERVED)

## 200. ORDER OF SELECTION.

~~01. Order of Selection.~~ The following order of selection will be used if the Idaho Division of Vocational Rehabilitation finds that it cannot serve all eligible ~~clients/participants~~ **customers** due to a lack of either personnel and/or financial resources. The priority listings progress downward with priority number one (1) being the most restrictive and priority number four (4) being the least restrictive. (5-3-03)(    )

~~a01.~~ **Priority Number 1.** At the time that a decision to move to an order of selection is made, it is determined that only those consumers who already have an existing individualized plan for employment (IPE) will continue to be served. (5-3-03)

~~b02.~~ **Priority Number 2.** At the time that a decision to move to an order of selection is made, it is determined that only those ~~consumers~~ **customers** in Priority Number 1 above and current and future, otherwise eligible, ~~clients/participants~~ **customers** rated to this or a more restrictive priority can be served. ~~Consumers~~ **Customers** meeting this priority rating are those ~~individuals~~ **customers** with most significant disabilities. (5-3-03)(    )

~~e03.~~ **Priority Number 3.** At the time that a decision to move to an order of selection is made, it is determined that only those ~~consumers~~ **customers** in Priorities Numbers 1 and 2 above and current and future, otherwise eligible, ~~clients/participants~~ **customers** rated to this or a more restrictive priority can be served. ~~Consumers~~ **Customers** meeting this priority rating are those ~~individuals~~ **customers** with significant disabilities. (5-3-03)(    )

~~d04.~~ **Priority Number 4.** All eligible ~~clients/participants~~ **customers** for Vocational Rehabilitation services (no order of selection in place). (5-3-03)(    )

201. -- 299. (RESERVED)

## 300. ~~CLIENT/PARTICIPANT~~ **CUSTOMER SERVICES.**

**01. Provision of Purchased Services Contingent upon Financial Need of the ~~Client/Participant~~ **Customer.**** The Idaho Division of Vocational Rehabilitation will apply a Financial Needs Assessment. Financial need will not be a consideration in the determination of eligibility for Vocational Rehabilitation, but will be a consideration in allocating the cost of VR services, with some exceptions. (5-3-03)(    )

**02. Authorization to Purchase.** The Division requires that when purchasing services from a vendor, an authorization must be issued prior to, or on, the beginning date of service. If services are provided without a Division approved authorization to purchase, the Division reserves the right to not honor the vendor's invoice.

(5-3-03)

**03. General Provisions.** Idaho Division of Vocational Rehabilitation will only pay for services that contribute to the determination of eligibility or to achieve an employment outcome.

(3-20-04)

**04. ~~Non-Residents of the State.~~** ~~Financial participation will only be available to residents of Idaho. Citizenship is not a requisite for financial assistance; however, the individual must have legal resident status and be present in the state (i.e., illegal aliens will not be eligible for the Vocational Rehabilitation programs).~~ **Residency.** There is no duration of residency requirement. The customer must be living in the state of Idaho and legally be able to work within the United States (i.e., non U.S. citizens must show they are legally able to work within the United States).

~~(3-20-04)~~( )

**05. Provision of CRP (Community Rehabilitation Program) Services.** IDVR will purchase vocational services from CRPs that are accredited by either Commission Accreditation Rehabilitation Facilities (CARF), the Rehabilitation Accreditation Commission, or Rehabilitation Services Accreditation System (RSAS). In conjunction with the ~~client/participant~~ customer, the qualified professional Vocational Rehabilitation Counselor, will determine which CRP Services, if any, are required for the ~~client/participant~~ customer to achieve an employment outcome.

~~(3-20-04)~~( )

# IDAPA 52 - IDAHO STATE LOTTERY

## 52.01.02 - GAMING RULES OF THE IDAHO STATE LOTTERY COMMISSION

### DOCKET NO. 52-0102-1201

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-7714, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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:

Last legislative session (2012), the Legislature passed SB 1286, which amended Sections 67-7709 and 67-7710, Idaho Code, to increase the maximum allowable expenditure percentages for charitable bingo and raffle licensees. The Lottery needs to amend applicable administrative rules to coincide with this change in law and render its rules consistent with now-existing law. They are currently inconsistent, instead mirroring the applicable law prior to the passing of SB 1286. This rulemaking amends IDAPA 52.01.02.115.02 and 52.01.02.204 to render the rules consistent with Sections 67-7709 and 67-7710, Idaho Code, so that, per Code, bingo licensees are allowed maximum expenditures for administrative expenses of 18% of gross bingo revenue and raffle licensees are allowed maximum allowable expenses (other than prizes) of 20% on net charitable raffle proceeds. This rulemaking simply renders applicable rules consistent with Idaho Code.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 it is not feasible. The changes are proposed simply to render applicable rules consistent with applicable Idaho Code. Legislation was passed last session (2012) that increased allowable expenditures for bingo and raffle licensees (SB 1286). Corresponding rule changes were not promulgated at that time, but are now required in order to render them consistent with that law change. There is nothing to be negotiated.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jeff Anderson, Executive Director, (208) 334-2600.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 17th day of August, 2012.

Jeff Anderson, Executive Director  
Idaho State Lottery  
1199 Shoreline Lane  
P. O. Box 6537  
Boise, ID 83707-6537  
Phone: (208) 334-2600  
Fax: (208) 344-2610

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 52-0102-1201

**115. LIMITS ON BINGO OPERATION'S PRIZE PAYOUT RATIOS AND ADMINISTRATIVE EXPENSES (RULE 115).**

**01. Applicability.** All organizations conducting bingo games, whether licensed or unlicensed, must adhere to the required limits of statute and of this rule in dedicating their gross revenues from bingo operations. These limits or percentages, or both, pertain to annual gross revenues during a twelve (12) month license year. See Section 67-7708, Idaho Code. (4-2-08)

~~**02. Maximum Payout Ratio.** A maximum payout ratio of prizes to annual gross revenues of sixty five percent (65%) is allowed. If agreed by the board of directors of the organization, the ratio of prizes to annual gross revenue may be increased to seventy percent (70%), but any increase in payout ratios above sixty five percent (65%) must be made up by an equal reduction from the maximum percentage of fifteen percent (15%) that can be allocated to expenses under Section 67-7709(1)(d), Idaho Code. For example, if the board of directors of an organization decides to increase the maximum prize payout ratio by three percent (3%) from sixty five percent (65%) to sixty eight percent (68%), then the maximum amount of annual gross revenues that can be allocated to expenses must be reduced by three percent (3%) from fifteen percent (15%) to twelve percent (12%). See Section 67-7709(1)(d), Idaho Code. (4-2-08)~~

~~**032. Donated Merchandise.** Donated merchandise offered as prizes is not included in the prize amounts paid out when calculating the prize payout ratio. The organization conducting the bingo game must document the value of the donated items, describe the donated items, and list the donated items on the daily reports as prizes. (7-1-97)~~

~~**043. Donated Cash Funds Prohibited.** Donated cash may not be offered as prizes in bingo games nor deposited into the separate bingo account. (7-1-97)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**204. REQUIREMENTS FOR DONATION TO CHARITY -- LIMITATION ON EXPENSES (RULE 204).** At least ~~ninety eight~~ ninety percent (~~98~~90%) of the net proceeds from sales of raffle tickets or chances and duck races must be donated to a charitable or nonprofit organization to be used for a charitable purpose. (Net proceeds are defined in Subsection 010.~~2930~~ of these rules.) The name and address of the charitable or nonprofit organizations awarded these funds must be listed on the annual raffle report submitted to the Lottery. The annual raffle report must also include the charitable purpose for which the charitable donation was used by the charitable organization or non-profit organization. A maximum of ~~ten~~ twenty percent (~~10~~20%) of net proceeds is allowed for expenses. See Section 67-7710(3), Idaho Code. (~~4-2-08~~)(    )

## IDAPA 52 - IDAHO STATE LOTTERY COMMISSION

### 52.01.03 - RULES GOVERNING OPERATIONS OF THE IDAHO STATE LOTTERY

#### DOCKET NO. 52-0103-1201 (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 67-7408(1)(e), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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 Lottery offers the purchase of tickets in the marketplace via ticket vending machines (PATs – Player Activated Terminals). Players can purchase draw game tickets (like Powerball) and instant scratch game tickets from the Player Activated Terminals using cash. Electronic payments now account for 55% of all consumer purchases, up from 43% in 1999. The Player Activated Terminals could also provide the convenience and benefit to the customer to choose to purchase tickets using a PIN-protected debit card. However, in order to provide this electronic convenience, and remain fiscally responsible, the Lottery must charge a minimal cost recovery fee to those customers who choose to take advantage of this convenience to purchase Lottery tickets using this vending machine. This is a user fee for those customers who choose not to use cash.

In order to encourage responsible play, the Lottery will limit electronic transactions to fifty dollars (\$50) in these Player Activated Terminals.

Addition to IDAPA 52.01.03, Rules Governing Operations of the Idaho State Lottery, to provide for collection of a cost-recovery (convenience) fee from Lottery customers who choose to take advantage of the convenience of purchasing tickets via electronic transaction from Lottery ticket vending machines (Player Activated Terminals) using their PIN-protected debit card. Nonetheless, the player always has the option of using cash to purchase tickets from the PATs, and at most PAT locations, to purchase tickets from a clerk at the counter instead of using a debit card at the PAT.

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

The Lottery must charge a minimal cost recovery fee to those customers who purchase tickets using a PIN-protected debit card from Player Activated Terminals. This is a user fee for those customers who choose not to use cash.

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

The Lottery anticipates no fiscal impact, either positive or negative. The cost recovery (convenience) fee will offset the charge incurred by the Lottery from the electronic payment provider for processing the transaction. The Lottery anticipates a nominal fee (plus or minus fifty cents (\$.50)), and an audit of actual fees incurred at each fiscal year end will determine whether an adjustment to the convenience fee, either up or down, is necessary.

**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 August 1, 2012 Idaho Administrative Bulletin, [Vol. 12-8, page 75](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A



**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jeff Anderson, Executive Director, (208) 334-2600.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 3, 2012.

DATED this 23rd day of August, 2012.

Jeff Anderson, Executive Director  
Idaho State Lottery  
1199 Shoreline Lane  
P. O. Box 6537  
Boise, ID 83707-6537  
Phone: (208) 334-2600  
Fax: (208) 344-2610

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**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 52-0103-1201**

**100. GENERAL PROVISIONS (RULE 100).**

**01. Purpose.** These rules are established by the Commission to define and regulate the operation and administration of the Lottery and the Commission. (3-26-08)

**02. Lottery Commission.** The Commission is charged with the authority and duty to regulate Lottery activities in the state of Idaho, consistent with the Idaho Constitution and the enabling legislation. The headquarters of the Commission and of the Lottery is in Boise. (3-26-08)

**03. Powers and Duties of the Commission.** (3-26-08)

**a. Rule Promulgation.** The Commission promulgates rules and conditions under which the statewide Lottery will be conducted. Subjects covered in such rules include but need not be limited to: (3-26-08)

i. The types of Lottery games to be conducted; (3-26-08)

ii. The prices of tickets in the Lottery; (3-26-08)

iii. In general the numbers and sizes of prize disbursements, the manner and frequency of prize drawings, and the manner in which payment will be made to holders of winning tickets; (3-26-08)

iv. The locations at which Lottery tickets may be sold, the manner in which they are to be sold, and contracting with Lottery vendors, retailers and contractors; (3-26-08)

v. The manner in which Lottery sales revenues are to be collected; (3-26-08)

vi. The amount of compensation to be paid to retailers; (3-26-08)

vii. Other areas relating to the efficient and economical operation and administration of a statewide Lottery consonant with the public interest. (3-26-08)

**b. Delegation to Director.** In addition to those duties assigned to the Director in the Act, the

Commission may, insofar as is consistent with the Idaho Constitution and the Act, delegate the performance of executive or administrative functions to the Director. (3-26-08)

**04. Time and Place of Meetings.** (3-26-08)

**a.** Regular meetings of the Commission must be held at least quarterly; the date, time, and place will be set by the Commission and, if possible, with at least two (2) weeks' advance notice. The Commission may meet with the Director to make recommendations and set policy, to approve or reject reports of the Director, to adopt rules, and to transact other business. (3-26-08)

**b.** Additional meetings necessary to discharge the business of the Commission may be called from time to time by the chairman or by a quorum of the Commission. (3-26-08)

**05. Open Meeting Law.** All meetings of the Commission shall be held in accordance with Idaho's Open Meeting Law, Sections 67-2340, et seq., Idaho Code, and in accordance with Section 67-7442, Idaho Code. All meetings of the Commission are open to the public, except when executive session is allowed for part of the meeting under the Open Meeting Law. (3-26-08)

**06. Director.** The Director is responsible for the operation of the Lottery and for managing the affairs of the Commission. A Deputy Director designated by the Director may act for the Director in the absence of the Director. If there is a vacancy in the office of Director, the Commission will designate the Deputy Director as Interim Director until the vacancy can be filled. (3-26-08)

**07. Powers and Duties of the Director.** (3-26-08)

**a.** The Director has the authority to implement and execute procedures that he may deem appropriate for the efficient administration of the Lottery. The Director may also recommend rules governing the establishment, administration, and operation of the Lottery to the Commission for its approval; (3-26-08)

**b.** The Director is authorized to employ sufficient staff as may be required to carry out the functions of the Commission and the Lottery; (3-26-08)

**c.** The Director may contract with retailers for the sale of Lottery games and must suspend or terminate any contract in accordance with the provisions of the Act and the rules of the Commission; (3-26-08)

**d.** The Director must continuously study and investigate all matters pertinent to the efficient operation of the Lottery; and (3-26-08)

**e.** The Director must maintain full and complete records of the operation of the Lottery. The Director must report on at least a monthly basis to the Commission and to the governor on the status of the Lottery. (3-26-08)

**f.** The duties and responsibilities of the Director that are not otherwise specified in Idaho law or the rules adopted by the Commission may be maintained as a policy of the Commission for the purpose of establishing a working relationship between the Director and the Commission. (3-26-08)

**08. Lottery Offices.** (3-26-08)

**a.** The principal office of the Lottery is located at 1199 Shoreline Lane, Suite 100, Boise, Idaho 83702. (3-26-08)

**b.** The Lottery may also operate other offices and facilities throughout the state as are appropriate to fulfill its responsibilities under law. (3-26-08)

**09. Lottery Budgets and Financial Statements.** The Director must: (3-26-08)

**a.** Submit quarterly financial statements to the Commission, the governor, the state treasurer, and the legislature. The quarterly financial statements must be prepared in accordance with generally accepted accounting

principles and must include a balance sheet, a statement of operations, a statement of changes in financial position, and related footnotes. The quarterly financial statements must be provided within forty-five (45) days of the last day of each quarter. (3-26-08)

**b.** Submit annual financial statements to the Commission, the governor, the state treasurer, and each member of the legislature. The annual financial statements must be prepared in accordance with generally accepted accounting principles and must include a balance sheet, a statement of operations, a statement of changes in financial position, and related footnotes. The annual financial statements must be examined by the state controller or a firm of independent certified public accountants in accordance with generally accepted auditing standards and must be provided within ninety (90) days of the last day of the Lottery's fiscal year. (3-26-08)

**10. Contingency Reserve.** (3-26-08)

**a.** The Director may, with the approval of the Commission, allot from moneys available to pay administrative expenses an amount to be transferred to a contingency reserve established by the Commission. The money allotted can include amounts retained to fund specific future expenses or can be undesignated as to purpose. (3-26-08)

**b.** When the Commission approves a contingency reserve, it must determine the amount necessary for a reasonable contingency reserve. (3-26-08)

**c.** Upon approval of the Commission, money in the contingency reserve may be authorized to be used for specific purposes of the Lottery or to be used to fund general administrative expenses if there is a revenue shortfall. Expenses funded from the contingency reserve cannot be included with other administrative expenses for purposes of determining compliance with current administrative expenditure limitations. (3-26-08)

**11. Special Drawings.** (3-26-08)

**a.** The Director may authorize special drawings to award prizes, such as vacation trips, automobiles, or other tangible items in addition to, or in lieu of, cash awards. The Director will determine the nature and number of awards for each special drawing. Special drawings for promotional awards may be held independently of the Lottery's regular prize drawings or may be incorporated therein. The promotional drawings may be cosponsored and conducted in conjunction with Lottery retailers or other independent businesses. In view of the temporary nature and indeterminate frequency of the promotional awards drawings, a press announcement and normal advertising media will be used to inform the public of the rules and prizes for each special drawing. (3-26-08)

**b.** Notwithstanding the provisions of Paragraph 100.11.a. of this rule, the Director may, at his discretion, award in-lieu equivalent cash awards to the winners of tangible items, in those instances where the Director deems it appropriate. The value of noncash items must be estimated by using either the cost of the item or its fair-market value. (3-26-08)

**12. Retail Drawings.** The Director and his designee may authorize retailers to conduct drawings using non-winning Lottery tickets in conjunction with a particular Lottery game. Such authorization must be in writing, must specify the type of drawing to be conducted and must set forth the methodology to be used in conducting the drawing. (3-26-08)

**13. Retail Ticket Price Discounts.** (3-26-08)

**a.** Notwithstanding the price adopted for the retail sale of a ticket in the rules for a specific Lottery game, the Commission may offer discounts for the retail sale of Lottery tickets. (3-26-08)

**i.** Discounts for the retail sale of Lottery tickets may be offered to the public through the use of coupons approved by the Director or by any other method approved by the Director. (3-26-08)

**ii.** Coupons that offer a discount on the retail price of Lottery tickets must be distributed using methods designed to reach the public. These methods may include, but are not limited to, the use of direct mail, newspaper advertising, or by having coupons available at Lottery offices and retailer locations. (3-26-08)

**b.** Rules for a promotion conducted by the Lottery using retail ticket discounts must be announced by the Director and made available at the Lottery's offices and retailer locations. (3-26-08)

**14. Allocation of Revenues for Prizes.** (3-26-08)

**a.** Purpose: The primary objective of the Lottery is to produce the maximum amount of net revenues to benefit the public purpose of raising revenue consonant with the dignity of the state and the sensibilities of its citizens. In accomplishing this objective, at least forty-five percent (45%) of the total annual revenues shall be returned in the form of prizes. The Lottery may design and conduct games that return more than forty-five percent (45%) of the revenues received from the sale of tickets in the form of prizes as an incentive to increase the total amount of game sales over the level of sales that otherwise would have been reasonably expected using a lower prize percentage. Games may also be authorized that return less than forty-five percent (45%) of that game's revenues so long as forty-five percent (45%) of the total annual revenues is returned as prizes. (3-26-08)

**b.** Prize payments: In addition to cash prize payments, money set aside by the Lottery and restricted for the payment of prizes is considered in satisfying the requirement of returning at least forty-five percent (45%) of total revenues to the public in the form of prizes. (3-26-08)

**c.** Averaging game prize payments: Notwithstanding the prize structure adopted for a Lottery game, the amount of revenue returned for prizes among all the games offered by the Lottery may be reallocated so long as at least forty-five percent (45%) of the total revenue earned from all games is returned to the public in the form of prizes on an annual basis. The Director must report to the Commission on any reallocations made pursuant to Section 100 o these rules. (3-26-08)

**15. Ownership of Lottery Tickets.** (3-26-08)

**a.** Except for tickets claimed jointly in accordance with the provisions of Paragraph 100.15.d. of this rule, until a name is printed or placed upon a Lottery ticket in the area designated for "name," the ticket is owned by the bearer of the ticket. When a name is placed on the ticket in the place designated for a name, the person whose name appears in that area is the owner of the ticket and is entitled to any prize attributable to the ticket. (3-26-08)

**b.** If more than one (1) name appears on a ticket, the ticket must be claimed in accordance with the joint ownership procedures listed in Paragraph 100.15.d. of this rule. (3-26-08)

**c.** Groups, family units, clubs, or other organizations may claim a winning ticket if the organization possesses a Federal Employer Identification Number (FEIN) issued by the Internal Revenue Service and that number is shown on the claim form. (3-26-08)

**d.** If a ticket is claimed to be owned by two (2) or more people, the following steps will be taken for payment of the prize: (3-26-08)

**i.** All people claiming ownership must complete and sign a request and release form. (3-26-08)

**ii.** At least one (1) of the people claiming ownership of the ticket must sign the ticket; that person's signature must also appear on the request and release form. (3-26-08)

**iii.** The Lottery reserves the right to issue a single prize check instead of multiple prize checks to the owners of a ticket if the value of each individual prize check would be less than fifty dollars (\$50). (3-26-08)

**iv.** Multiple winners of a Lottery prize will be paid only through the Boise Lottery office. Lottery retailers will not be required to pay more than one (1) winner of a single prize. (3-26-08)

**16. Claims.** (3-26-08)

**a.** Liability. By submitting a claim, the player agrees that the state, the Commission, the Lottery and all officials, officers, and employees of each are discharged from all further liability upon payment of the prize.

(3-26-08)

**b.** Publicity. By submitting a claim, the player also agrees that the Lottery may use the prize winner's name and photograph for publicity purposes. (3-26-08)

**c.** Claim period. Prizes may be claimed for a period of one hundred eighty (180) days after the drawing in which the prize was won or from the last day tickets from the specific instant game were sold. Prizes won through an electronic terminal are payable in accordance with the Lottery's rules. If a claim is not made for the prize within the applicable period, the prize money will be added to future prize pools, to be used in addition to prize allotments already allocated, except as provided in Section 67-7433, Idaho Code. (3-26-08)

**d.** Invalid tickets. If a ticket presented to the Lottery is invalid pursuant to the terms of these rules or the specific game rules, the ticket is not entitled to prize payment. (3-26-08)

**e.** Ticket a bearer instrument. A ticket is a bearer instrument until signed in the space designated on the ticket for signature, if a signature space is provided. The person who signs the ticket is considered the owner of the ticket after signing it. Payment of any prize may be made to a person in possession of an unsigned ticket or to the person whose signature appears on the ticket. All liability of the state, the Commission, the Lottery, the Director, and Lottery employees terminates upon payment. (3-26-08)

**f.** Time of prize payment. All prizes will be paid within a reasonable time after a claim is verified by the Lottery and a winner is determined. The date of the first installment payment of any prize to be paid in installment payments is the date the claim is validated and processed, unless a different date is specified for a particular game in these rules or in the specific game rules. Later installment payments will be made approximately weekly, monthly, or annually, from the date the claim is processed and validated in accordance with the type of prize won and the rules applicable to the prize. The Lottery may, at any time, delay any prize payment in order to review a change in circumstances concerning the prize awarded, the payee, or the claim. (3-26-08)

**g.** Prizes payable for winner's life. If any prize is for the life of the winner, only an individual may claim and receive the prize for life. If a group, corporation, or other organization is the winner, the life of the winner is deemed to be twenty (20) years. (3-26-08)

**17. Prizes Payable After Death of Winner.** All prizes, and portions of prizes, that remain unpaid at the time of the prize winner's death will be payable to the personal representative of the prize winner's estate once satisfactory evidence of the personal representative's appointment has been provided, and the Director is satisfied that payment to the personal representative is lawful and proper. The Director may rely on a certified copy of a court order appointing a personal representative (or similar person responsible for the prize winner's estate, whether denominated an administrator, executor, executrix, or other representative of the prize winner's estate) or may petition the court to determine the proper payee. Payment to the personal representative of the estate of the deceased owner of any prize winnings will absolve the Director and the Lottery's employees of any further liability for payment of prize winnings. (3-26-08)

**18. Disability of Prize Winner.** The Lottery may petition any court of competent jurisdiction for a determination of the rightful payee for the payment of any prize winnings that are or may become due to a person under a disability including, but not limited to, minority, mental deficiency, or physical or mental incapacity. (3-26-08)

**19. Stolen or Lost Tickets.** The Lottery has no responsibility for paying prizes attributable to stolen or lost tickets. (3-26-08)

**20. Effect of Game Rules.** In purchasing a ticket the player agrees to comply with Title 67, Chapter 74, Idaho Code, these rules, the specific game rules, Lottery instructions and procedures, and the final decisions of the Lottery. The Lottery's decisions and judgments in respect to the determination of winning tickets or any other dispute arising from the payment or awarding of prizes will be final and binding upon all participants in the Lottery. If a dispute between the Lottery and a player occurs as to whether a ticket is a winning ticket and the prize is not paid, the Lottery may, solely at the Director's option, replace the ticket with an unplayed ticket of an equivalent price from any game or refund the price of the ticket. This will be the sole and exclusive remedy of the player. (3-26-08)

**21. Disputed Prizes.** If there is a dispute, or it appears that there may a dispute concerning payment or ownership of any prize or any other legal issue involving the prize, the Lottery may refrain from making payment of the prize pending a final determination by the Lottery or by a court of competent jurisdiction as to the proper payment of the prize. (3-26-08)

**22. Sale of Lottery Tickets.** Lottery tickets may be sold for cash, check, money order, credit card, electronic funds transfer, or debit card. (5-8-09)

**23. Convenience Fee.** The Lottery may collect a cost recovery fee, set by the Commission, from Lottery customers choosing to purchase lottery tickets with the convenience of using debit card electronic transactions administered by the Lottery through the use of a third party payment processor. ( )

## IDAPA 52 - IDAHO STATE LOTTERY

### 52.01.03 - RULES GOVERNING OPERATIONS OF THE IDAHO STATE LOTTERY

DOCKET NO. 52-0103-1202

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-7408(1), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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 antiquated requirement set forth in rule needs to be revised to reflect the accurate, current practice for audit and review of on-line game drawings and the joint claims process for players claiming joint ownership of a winning lottery ticket needs clarification to more specifically reflect the current required procedure. This proposed rule eliminates an antiquated requirement that the equipment used for on-line game drawings must be inspected before and after drawings. With technological advances over the years, that is not the long-standing practice. Instead, all drawing results are audited and reviewed after each drawing to assure proper operation and lack of tampering or fraud in accordance with industry-standard procedures governing on-line game drawings set by the Multi-State Lottery Association (MUSL). Changes to Rule 204.02.a. and 204.07.e. reflect the current practice. Also, changes to Rule 100.15.d.i. clarify the procedure for processing joint claims on winning lottery tickets in order to avoid disputes over prize winnings payouts.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 nature of the rule changes are simple in nature in that changes to clarify process for joint claims on winning lottery tickets simply specify more clearly the established required procedure for processing joint claims where there are more than one persons claiming ownership of a winning ticket. Negotiation isn't feasible on this requirement. The rules already require the procedure and the Lottery only seeks to clarify more exactly the procedure. The other proposed change in this rulemaking is also very simple in nature and there aren't identifiable representatives of affected interests. The Lottery seeks elimination of an outdated, antiquated equipment inspection requirement that is obsolete due to technological advances over the years. Instead, the Lottery seeks to revise the rule to reflect current, industry-standard procedures governing on-line game drawings set by the Multi-State Lottery Association (MUSL).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jeff Anderson, Executive Director, (208) 334-2600.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 17th day of August, 2012.

Jeff Anderson, Executive Director  
Idaho State Lottery  
1199 Shoreline Lane  
P. O. Box 6537  
Boise, ID 83707-6537  
Phone: (208) 334-2600  
Fax: (208) 344-2610

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 52-0103-1202**

**100. GENERAL PROVISIONS (RULE 100).**

**01. Purpose.** These rules are established by the Commission to define and regulate the operation and administration of the Lottery and the Commission. (3-26-08)

**02. Lottery Commission.** The Commission is charged with the authority and duty to regulate Lottery activities in the state of Idaho, consistent with the Idaho Constitution and the enabling legislation. The headquarters of the Commission and of the Lottery is in Boise. (3-26-08)

**03. Powers and Duties of the Commission.** (3-26-08)

**a. Rule Promulgation.** The Commission promulgates rules and conditions under which the statewide Lottery will be conducted. Subjects covered in such rules include but need not be limited to: (3-26-08)

i. The types of Lottery games to be conducted; (3-26-08)

ii. The prices of tickets in the Lottery; (3-26-08)

iii. In general the numbers and sizes of prize disbursements, the manner and frequency of prize drawings, and the manner in which payment will be made to holders of winning tickets; (3-26-08)

iv. The locations at which Lottery tickets may be sold, the manner in which they are to be sold, and contracting with Lottery vendors, retailers and contractors; (3-26-08)

v. The manner in which Lottery sales revenues are to be collected; (3-26-08)

vi. The amount of compensation to be paid to retailers; (3-26-08)

vii. Other areas relating to the efficient and economical operation and administration of a statewide Lottery consonant with the public interest. (3-26-08)

**b. Delegation to Director.** In addition to those duties assigned to the Director in the Act, the Commission may, insofar as is consistent with the Idaho Constitution and the Act, delegate the performance of executive or administrative functions to the Director. (3-26-08)

**04. Time and Place of Meetings.** (3-26-08)

**a.** Regular meetings of the Commission must be held at least quarterly; the date, time, and place will be set by the Commission and, if possible, with at least two (2) weeks' advance notice. The Commission may meet with the Director to make recommendations and set policy, to approve or reject reports of the Director, to adopt rules, and to transact other business. (3-26-08)



**b.** Additional meetings necessary to discharge the business of the Commission may be called from time to time by the chairman or by a quorum of the Commission. (3-26-08)

**05. Open Meeting Law.** All meetings of the Commission shall be held in accordance with Idaho's Open Meeting Law, Sections 67-2340, et seq., Idaho Code, and in accordance with Section 67-7442, Idaho Code. All meetings of the Commission are open to the public, except when executive session is allowed for part of the meeting under the Open Meeting Law. (3-26-08)

**06. Director.** The Director is responsible for the operation of the Lottery and for managing the affairs of the Commission. A Deputy Director designated by the Director may act for the Director in the absence of the Director. If there is a vacancy in the office of Director, the Commission will designate the Deputy Director as Interim Director until the vacancy can be filled. (3-26-08)

**07. Powers and Duties of the Director.** (3-26-08)

**a.** The Director has the authority to implement and execute procedures that he may deem appropriate for the efficient administration of the Lottery. The Director may also recommend rules governing the establishment, administration, and operation of the Lottery to the Commission for its approval; (3-26-08)

**b.** The Director is authorized to employ sufficient staff as may be required to carry out the functions of the Commission and the Lottery; (3-26-08)

**c.** The Director may contract with retailers for the sale of Lottery games and must suspend or terminate any contract in accordance with the provisions of the Act and the rules of the Commission; (3-26-08)

**d.** The Director must continuously study and investigate all matters pertinent to the efficient operation of the Lottery; and (3-26-08)

**e.** The Director must maintain full and complete records of the operation of the Lottery. The Director must report on at least a monthly basis to the Commission and to the governor on the status of the Lottery. (3-26-08)

**f.** The duties and responsibilities of the Director that are not otherwise specified in Idaho law or the rules adopted by the Commission may be maintained as a policy of the Commission for the purpose of establishing a working relationship between the Director and the Commission. (3-26-08)

**08. Lottery Offices.** (3-26-08)

**a.** The principal office of the Lottery is located at 1199 Shoreline Lane, Suite 100, Boise, Idaho 83702. (3-26-08)

**b.** The Lottery may also operate other offices and facilities throughout the state as are appropriate to fulfill its responsibilities under law. (3-26-08)

**09. Lottery Budgets and Financial Statements.** The Director must: (3-26-08)

**a.** Submit quarterly financial statements to the Commission, the governor, the state treasurer, and the legislature. The quarterly financial statements must be prepared in accordance with generally accepted accounting principles and must include a balance sheet, a statement of operations, a statement of changes in financial position, and related footnotes. The quarterly financial statements must be provided within forty-five (45) days of the last day of each quarter. (3-26-08)

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**c.** Groups, family units, clubs, or other organizations may claim a winning ticket if the organization possesses a Federal Employer Identification Number (FEIN) issued by the Internal Revenue Service and that number is shown on the claim form. (3-26-08)

**d.** If a ticket is claimed to be owned by two (2) or more people, the following steps will be taken for payment of the prize: (3-26-08)

**i.** All people claiming ownership must complete and sign a ~~request and release claim~~ form and declare their percentage of the prize prior to processing the claim. After the claim form is submitted to the Lottery, the percentage cannot be amended. The percentages claimed must add up to one hundred percent (100%) of the prize. (3-26-08)(      )

**ii.** At least one (1) of the people claiming ownership of the ticket must sign the ticket; that person's signature must also appear on the ~~request and release claim~~ form. (3-26-08)(      )

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**f.** Time of prize payment. All prizes will be paid within a reasonable time after a claim is verified by the Lottery and a winner is determined. The date of the first installment payment of any prize to be paid in installment payments is the date the claim is validated and processed, unless a different date is specified for a particular game in these rules or in the specific game rules. Later installment payments will be made approximately weekly, monthly, or annually, from the date the claim is processed and validated in accordance with the type of prize won and the rules applicable to the prize. The Lottery may, at any time, delay any prize payment in order to review a change in circumstances concerning the prize awarded, the payee, or the claim. (3-26-08)

**g.** Prizes payable for winner's life. If any prize is for the life of the winner, only an individual may claim and receive the prize for life. If a group, corporation, or other organization is the winner, the life of the winner is deemed to be twenty (20) years. (3-26-08)

**17. Prizes Payable After Death of Winner.** All prizes, and portions of prizes, that remain unpaid at the time of the prize winner's death will be payable to the personal representative of the prize winner's estate once satisfactory evidence of the personal representative's appointment has been provided, and the Director is satisfied that payment to the personal representative is lawful and proper. The Director may rely on a certified copy of a court order appointing a personal representative (or similar person responsible for the prize winner's estate, whether denominated an administrator, executor, executrix, or other representative of the prize winner's estate) or may petition the court to determine the proper payee. Payment to the personal representative of the estate of the deceased owner of any prize winnings will absolve the Director and the Lottery's employees of any further liability for payment of prize winnings. (3-26-08)

**18. Disability of Prize Winner.** The Lottery may petition any court of competent jurisdiction for a determination of the rightful payee for the payment of any prize winnings that are or may become due to a person under a disability including, but not limited to, minority, mental deficiency, or physical or mental incapacity. (3-26-08)

**19. Stolen or Lost Tickets.** The Lottery has no responsibility for paying prizes attributable to stolen or lost tickets. (3-26-08)

**20. Effect of Game Rules.** In purchasing a ticket the player agrees to comply with Title 67, Chapter 74, Idaho Code, these rules, the specific game rules, Lottery instructions and procedures, and the final decisions of the Lottery. The Lottery's decisions and judgments in respect to the determination of winning tickets or any other dispute arising from the payment or awarding of prizes will be final and binding upon all participants in the Lottery. If a dispute between the Lottery and a player occurs as to whether a ticket is a winning ticket and the prize is not paid, the Lottery may, solely at the Director's option, replace the ticket with an unplayed ticket of an equivalent price from any game or refund the price of the ticket. This will be the sole and exclusive remedy of the player. (3-26-08)

**21. Disputed Prizes.** If there is a dispute, or it appears that there may a dispute concerning payment or ownership of any prize or any other legal issue involving the prize, the Lottery may refrain from making payment of the prize pending a final determination by the Lottery or by a court of competent jurisdiction as to the proper payment of the prize. (3-26-08)

**22. Sale of Lottery Tickets.** Lottery tickets may be sold for cash, check, money order, credit card, electronic funds transfer, or debit card. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**204. ON-LINE COMPUTER GAMES (RULE 204).**

**01. On-Line Games -- Authorized -- Director's Authority.** The Commission hereby authorizes the Director to select and operate on-line games which meet the criteria set forth in these rules. (3-26-08)

**02. Definitions.** As used in Rule 204 these terms have the following definitions: (3-26-08)

**a.** "Drawing." The procedure determined by the Director by which the Lottery selects the winning combination in accordance with the rules of the game. Drawings are open to the public. *The equipment used in any drawing must be inspected by the Director of Security or his designee both before and after the drawing.* (5-8-09)( )

**b.** "On-line Game." A Lottery game in which a player selects a combination of numbers or symbols, the type of game and amount of play, and the drawing date by use of a computer. In return for paying the appropriate fee, the player receives a computer-generated ticket with the player's selection printed on it. Each ticket bearer whose valid ticket includes a winning combination will be entitled to a prize if claim is submitted within the specified time period. (3-26-08)

**c.** "On-line Retailer." A person or business authorized by the Lottery to sell on-line tickets. (3-26-08)

**d.** "On-line Terminal (OLT)." The computer hardware by which an on-line retailer or player enters the combination selected by the player and by which on-line tickets are generated and claims are validated. (3-26-08)

**e.** "On-line Ticket." A computer-generated ticket issued by an on-line terminal to a player as a receipt for the combination a player has selected. That ticket is the only acceptable evidence of the combination of numbers or symbols selected. (3-26-08)

**f.** "Ticket Bearer." The person who has signed the on-line ticket or who has possession of an unsigned ticket. (3-26-08)

**g.** "Validation." The process of determining whether an on-line ticket presented for payment is a winning ticket. (3-26-08)

**h.** "Winning Combination." One (1) or more numbers or symbols randomly selected by the State Lottery or its designee in a public drawing. (3-26-08)

**03. Distribution of Tickets.** (3-26-08)

**a.** Tickets will be sold by retailers selected by the Director. (3-26-08)

**b.** The Director is authorized to arrange for the distribution of OLTs, player-activated terminals (PATs), ticket stock, and supplies to certificated retailers. (3-26-08)

**04. Sale of Tickets.** (3-26-08)

**a.** No person other than a retailer under a contract for the sale of tickets with the Lottery may sell on-line Lottery tickets, except that nothing in this section will be construed to prevent a person who may lawfully purchase tickets from making a gift of Lottery tickets to another. (3-26-08)

**b.** Tickets may not be sold at a location other than the address listed on the retailer's contract with the Lottery. (3-26-08)

**c.** Nothing in this section shall be construed to prohibit the Director from designating certain of its agents and employees to sell Lottery tickets directly to the public. (3-26-08)

**05. On-Line Games Criteria.** (3-26-08)

**a.** The base price of an on-line ticket will not be less than fifty cents (\$.50), except to the extent of discounts authorized by the Commission. (3-26-08)

**b.** The price for a ticket in any particular on-line game will be set out in the game rules adopted by the Commission for that game. No person may sell a ticket at a price other than that established in accordance with these rules. On the average, the total of all prizes available to be won in an on-line game shall not be less than forty-five percent (45%) of the on-line game's projected revenue. (3-26-08)

**c.** The manner and frequency of drawings may vary with the type of on-line game. (3-26-08)

**d.** The times, locations, and drawing procedures will be determined by the Director. (3-26-08)

**e.** A ticket bearer entitled to a prize must submit the winning ticket as specified by the Director. The winning ticket must be validated by the Lottery or an on-line retailer through use of the validation number and any other means specified by the Director. (3-26-08)

**06. Payment of Prizes.** (3-26-08)

**a.** To claim an on-line game prize of less than six hundred dollars (\$600) the claimant may present the winning on-line ticket to any on-line retailer, or to the Boise Lottery office: (3-26-08)

**i.** If the claim is presented to an on-line retailer, the on-line retailer must validate the claim and, if determined to be a winning ticket, pay the amount due the claimant. If the on-line retailer cannot validate the claim, the claimant may obtain and complete a claim form and submit it with the disputed ticket to the Lottery by mail or in person. Upon determination that the ticket is a winning ticket, the Lottery will present or mail a check to the claimant in payment of the amount due. If the ticket is determined to be a non-winning ticket, the claim will be denied and the claimant will be promptly notified. Non-winning tickets will not be returned to the claimant. (3-26-08)

**ii.** If the claim is presented to the Boise Lottery office, the claimant may be required to complete a claim form and submit it with the winning ticket, either by mail or in person. Upon determination that the ticket is a winning ticket, the Lottery will present or mail a check to the claimant in payment of the amount due, less any withholding required by the Internal Revenue Code. If the ticket is determined to be a non-winning ticket, the claim will be denied and the claimant will be promptly notified. Non-winning tickets will not be returned to the claimant. (3-26-08)

**b.** To claim an on-line prize of six hundred dollars (\$600) or more, the claimant must obtain and complete a claim form and submit it with the winning ticket to the Boise Lottery office by mail or in person. Prizes of six hundred dollars (\$600) or more can be paid only from the Boise Lottery office. Upon determination that the ticket is a winning ticket, the Lottery will present or mail a check to the claimant in payment of the amount due, less any withholding required by the Internal Revenue Code. The amount due will be calculated according to the rules adopted for the particular on-line game. If the ticket is determined to be a non-winning ticket, the claim will be denied and the claimant will be promptly notified. Non-winning tickets will not be returned to the claimant. (3-26-08)

**c.** All prizes must be claimed within one hundred eighty (180) days from the drawing in which the prize was won. If the final day of the one hundred eighty (180) day period falls on a Saturday, Sunday or a state holiday, the claim period will be extended to the end of the next business day. Any prize not claimed within the specified period will be forfeited and placed into the State Lottery account. (3-26-08)

**07. Drawings and End of Sales Prior to Drawings.** (3-26-08)

- a. Drawings will be conducted in a location and at days and times designated by the Director. (3-26-08)
- b. For each type of on-line game, the Director will establish a time before the drawing for the end of sales. (3-26-08)
- c. The Director will designate a Drawing Manager who will oversee each drawing. The Drawing Manager must attest that the drawing was conducted in accordance with proper drawing procedures at the end of each drawing. (3-26-08)
- d. The Director will designate the type of equipment to be used and will establish procedures to randomly select the winning combination for each type of on-line game. Drawing procedures will include provisions for the substitution of backup drawing equipment if the primary drawing equipment malfunctions or fails for any reason. (3-26-08)
- e. The equipment used to determine the winning combination will not be electronically or otherwise connected to the central computer or to any tapes, discs, files, etc., generated or produced by the central computer. The ~~equipment must be tested before and~~ drawing results are audited and reviewed after each drawing to assure proper operation and lack of tampering or fraud. Drawings will not be held until all pre-inspection checks are completed. No prizes will be paid until after all post-inspection checks have been completed. ~~(3-26-08)~~( )
- f. All drawings may be broadcast live on television, provided the facilities for such broadcasts are available and operational and can be done at a reasonable cost. (5-8-09)
- g. The Director will establish procedures governing the conduct of drawings for each type of on-line game. The procedures must include provisions for deviations that include but are not limited to: (3-26-08)
- i. Malfunction of the drawing equipment before determination of the winning combination; (3-26-08)
- ii. Fouled drawing; (3-26-08)
- iii. Delayed drawing; and (3-26-08)
- iv. Other equipment, facility or personnel difficulties. (3-26-08)
- h. If a deviation occurs, the drawing will be completed under the supervision of the Lottery or its designee. The winning combination will be provided to the television network for dissemination to the public. (5-8-09)
- i. If, during any live-broadcast drawing for a game, a mechanical failure or operator error causes an interruption in the selection of all numbers or symbols, a "foul" will be called by the Drawing Manager or the Lottery's designee. Any number drawn before a "foul" is called will stand and be deemed official after passing inspection and certification by the Drawing Manager or the Lottery's designee. (3-26-08)
- j. The Director must delay payment of all prizes if any evidence exists or there are grounds for suspicion that tampering or fraud has occurred. Payment will be made after an investigation is completed and the drawing approved by the Drawing Manager or the Lottery's designee. If the drawing is not approved, it will be void and another drawing will be conducted to determine the actual winner. (3-26-08)
- 08. Validation Requirements.** (3-26-08)
- a. To be a valid winning on-line ticket, all of the following conditions must be met: (3-26-08)
- i. All printing on the ticket must be present in its entirety, be legible, and correspond, using the computer validation file, to the combination and the date printed on the ticket. (3-26-08)

- ii. The ticket must be intact. (3-26-08)
  - iii. The ticket must not be mutilated, altered, or tampered with in any manner. (3-26-08)
  - iv. The ticket cannot be counterfeit or an exact duplicate of another winning ticket. (3-26-08)
  - v. The ticket must have been issued by an authorized on-line retailer or dispensed by a player-activated terminal in an authorized manner. (3-26-08)
  - vi. The ticket must not have been stolen or cancelled. (3-26-08)
  - vii. The ticket must not have been previously paid. (3-26-08)
  - viii. The ticket must pass all other confidential security checks of the Lottery. (3-26-08)
  - ix. If the prize is for six hundred dollars (\$600) or more, the ticket must be signed. (3-26-08)
- b.** A ticket failing any of the validation requirements listed in Paragraph 204.08.a. of this rule is invalid and ineligible for a prize. The final decision on whether a prize is paid will be made by the Director. (3-26-08)
- c.** If there is a dispute between the Director and a claimant whether a ticket is a winning ticket, and if the Director determines that the ticket is not valid and a prize is not paid, the Director may replace the disputed ticket with a ticket of equivalent sales price for a future drawing of the same type of game. This will be the sole and exclusive remedy of the claimant. (3-26-08)
- d.** If a defective on-line ticket is purchased, the only responsibility or liability of the Lottery or of the on-line retailer is the replacement of the defective on-line ticket with another on-line ticket of equivalent value for a future drawing of the same type of game. (3-26-08)
- 09. Retailer Duties.** Retailers with an on-line terminal (OLT) must perform the following duties: (3-26-08)
- a.** Pay costs associated with providing a telephone line or internet or similar connection that must be located as specified by the Lottery. Payment of the telephone line or internet or similar connection is nonrefundable after installation, except if the Lottery denies, through no fault of retailer, the installation of the on-line terminal. (5-8-09)
  - b.** Pay the Lottery for the local monthly telephone or internet or similar charges per OLT as specified by the Lottery. The Lottery will pay for the mileage charges (if any) between the retailer's location and the Lottery's central site. (3-26-08)
  - c.** Hold funds generated from the sale of on-line tickets in trust for the Lottery. At a time specified by the Lottery, the retailer must pay these funds to the Lottery plus the monthly communications charge specified above in Paragraph 204.09.b. of this rule, less: (3-26-08)
    - i. Prizes paid; (3-26-08)
    - ii. Any credit; and (3-26-08)
    - iii. The retailer discount. (3-26-08)
  - d.** Locate the OLT within the retailer's premises at a point-of-sale location approved by the Lottery. The retailer is prohibited from moving an OLT unless the retailer follows the procedures established by the Director, including reimbursing the State Lottery for any telephone or internet or similar charges associated with the change of OLT location if the retailer requested the change. (3-26-08)



**e.** Provide dedicated AC power to within approximately five (5) feet of the terminal. Dedicated AC power means that there is no other equipment on the line that is to be used for the on-line terminal. The retailer is responsible for all costs associated with providing dedicated AC power. The Lottery will provide a schematic of outlet requirements to the retailer's electrical contractor. (3-26-08)

**f.** Sell all Lottery games, including but not limited to instant game tickets offered by the Lottery. The retailer agrees to continue the sale of instant tickets from all cash registers or other points of purchase. (3-26-08)

**g.** Conduct the sale of on-line tickets during all hours and days that the retailer's business is open and the on-line system is functioning. The retailer must post the hours that redemption of winning tickets may take place if these hours are different from the retailer's normal business hours. The retailer must monitor ticket supply levels and give timely notice when any item is in short supply. (3-26-08)

**h.** Post winning numbers prominently where tickets are sold as soon as possible following the drawing. (3-26-08)

**i.** Provide secure storage for OLT supplies and a secure area for the OLT. (3-26-08)

**j.** Exercise due diligence in the operation of the OLT and immediately notify the Lottery and the central computer facility of any telephone line, internet, radio, or OLT malfunction, such as the issuance of invalid on-line Lottery ticket, inability to sell or redeem an on-line ticket, and non-issuance of an on-line ticket. The retailer is prohibited from performing mechanical or electrical maintenance on the OLT. (3-26-08)

**k.** Replace ribbons and on-line or instant ticket stock and clear paper jams as required for the OLT per the instructions provided by the Lottery. (3-26-08)

**l.** Pay, without reimbursement, all electricity charges in connection with the operation of OLT. (3-26-08)

**10. Payment of Prizes by On-Line Retailers.** (3-26-08)

**a.** An on-line retailer must pay to the ticket bearer on-line games prizes of less than six hundred dollars (\$600) for any validated claims presented to that on-line retailer. These prizes must be paid during all normal business hours of the on-line retailer, unless redemption hours differ from normal business hours that have been posted pursuant to Paragraph 204.09.g. of this rule, provided, that the on-line system is operational and claims can be validated. (3-26-08)

**b.** An on-line retailer may pay prizes in cash or by business check, certified check, money order, or any combination thereof. An on-line retailer that pays a prize with a check that is dishonored may be subject to suspension or termination of its contract. (3-26-08)

**11. Retailer Settlement.** (3-26-08)

**a.** The Director may require on-line retailers to establish an account for deposit of monies derived from on-line games with a financial institution that has the capability of electronic funds transfer (EFT). (3-26-08)

**b.** The amount deposited must be sufficient to cover monies due the Lottery. The Lottery will withdraw by EFT the amount due the Lottery on the day specified by the Director. If the day specified for withdrawal falls on a state holiday, withdrawal may be delayed until the next business day. (3-26-08)

**12. Prize Rights Unassignable.** No right of any person to a prize drawn shall be assignable, except that payment of any prize drawn may be paid to the estate of a deceased prize winner, and that any person may be paid the prize to which the winner is entitled pursuant to an appropriate judicial order. The Director will be discharged of all liability upon payment of a prize pursuant to this rule. (3-26-08)

**13. Payment of Prizes to Persons Under Eighteen Years of Age.** If a person entitled to a prize for a

winning ticket is under the age of eighteen (18) years, the Director may direct payment of the prize to an adult member of the minor's family or to the minor's guardian by a check or draft payable to the adult member of the minor's family or to the minor's guardian. The adult member of the minor's family or the minor's guardian will have the same duties and powers as a person designated as a custodian in accordance with Idaho Law. For purposes of this Subsection the terms "adult member of a minor's family" and "guardian of a minor" have the same meaning as in the Idaho Gifts to Minors Law. The Director will be discharged of all liability upon payment of a prize to a minor pursuant to this rule. (3-26-08)

**14. Prizes Payable After Death or Disability of Owner.** (3-26-08)

**a.** All prizes, and portions of prizes, that remain unpaid at the time of the prize winner's death will be payable to the personal representative of the prize winner's estate once satisfactory evidence of the personal representative's appointment has been provided, and the Director is satisfied that payment to the personal representative is lawful and proper. The Director may rely on a certified copy of a court order appointing of a personal representative (or similar person responsible for the prize winner's estate, whether denominated an administrator, executor, executrix, or other representative of the prize winner's estate) or may petition the court to determine the proper payee. Payment to the personal representative of the estate of the deceased owner of any prize winnings will absolve the Director and the Lottery's employees of any further liability for payment of prize winnings. (3-26-08)

**b.** The Lottery may petition any court of competent jurisdiction for a determination of the rightful payee of any prize winnings that are or may be due to a person under a disability including, but not limited to, minority, mental deficiency, physical or mental incapacity. (3-26-08)

**15. Discharge of State Lottery Upon Payment.** The state of Idaho, its agents, officers, employees and representatives, the Lottery, its Director, agents, officers, employees and representatives shall be discharged of all liability upon payment of a prize or any one (1) installment thereof to the holder of any winning Lottery ticket or in accordance with the information set forth on the claim form supplied by the Director. If there is a conflict between the information on a winning Lottery ticket and the information on the claim form, the Lottery may rely on the claim form after the ticket for which it has been filed has been validated as a winning ticket and, in so doing, it will be relieved of all responsibility and liability in the payment of a prize in accordance with the information set forth therein. The Lottery's decisions and judgments in respect to the determination of a winning ticket or of any other dispute arising from payment or awarding of prizes will be final and binding upon all participants in the Lottery unless otherwise provided by law or these rules. If a question arises concerning the winning ticket, a claim form, the payment, or the awarding of any prize, the Lottery may deposit the prize winnings into an escrow fund until it determines the controversy and reaches a decision, or it may petition a court of competent jurisdiction for instructions and a resolution of the controversy. (3-26-08)

**16. Disclosure.** The Lottery may use the names, addresses, and photographs of winners in any Lottery promotional or publicity campaign. The address used will not contain the winner's street or house number without the winner's consent. The Lottery may condition payment of the prize upon agreement to these terms and conditions. (3-26-08)

## IDAPA 54 - OFFICE OF THE STATE TREASURER

### 54.03.01 - IDAHO UNCLAIMED PROPERTY ADMINISTRATIVE RULES

DOCKET NO. 54-0301-1201

#### 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 14-532 and 14-539, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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 revisions are necessary to clarify complicated language or to reflect existing procedures making it easier for Idaho citizens to understand Title 14, Chapter 5, Idaho Code. The revisions provide clarifications and a better understanding of existing rules and procedures.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 revisions are limited and provide clarifications of existing rules and procedures, including the elimination and simplification of several rules. All Idaho citizens are impacted by the program and there is no group or organization representing affected citizens.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cozette Walters, Administrator, Unclaimed Property, at (208) 332-2979.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 10th day of September, 2012.

Cozette Walters  
Administrator, Unclaimed Property  
Office of the State Treasurer  
304 N. 8th St.  
P. O. Box 83720  
Boise, ID 83720-9101  
Phone: (208) 332-2979  
Fax: (208) 332-2970

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 54-0301-1201

**002. WRITTEN INTERPRETATIONS (RULE 002).**

This agency ~~has~~ may have written statements as defined in Section 67-5201(19)(b)(iv), Idaho Code, which pertain to the interpretation of the rules of this chapter or to the documentation of compliance with the rules of this chapter. To the extent that such documents are not confidential by statute or rule, the documents are available for public inspection ~~and copying~~ at the ~~main~~ unclaimed property office of the State Treasurer. See Rule 005 of these rules for the ~~main~~ office address. (3-15-02)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**006. UNCLAIMED EXPENSES AND CHECKS (RULE 006).**

Intangible property required to be reported and delivered to the state includes outstanding or unclaimed expense and vendor checks, payroll checks, claim checks or drafts or other miscellaneous checks and drafts. The term "check" also includes items referred to as "warrants." The term "payroll" includes commissions and any other form of monetary payment to an employee in exchange for services. If the payee has disclaimed ownership, the holder must retain a confirmation letter signed by the payee stating that the amount the holder is showing for them is not due and owing and is to remain on the books of the holder for audit purposes. (7-1-98)( )

~~01. Confirmation. A confirmation letter by the payee which claims that the amount is due and owing to the payee should be accompanied by a facsimile instrument issued by the holder in payment of the amount due and owing before the account will be considered not abandoned.~~ (8-24-94)

~~02. Clearance. A confirmation letter signed by the payee which states that the amount is not due and owing to the payee will be deemed sufficient to relieve the holder of the liability even if the check with which the holder paid the liability has not yet cleared the holder's bank.~~ (7-1-98)

**(BREAK IN CONTINUITY OF SECTIONS)**

**012. GENERAL RULES FOR TAKING CUSTODY OF UNCLAIMED PROPERTY (RULE 012).**

**01. In General.** Under the rule established by the United States Supreme Court in Texas v. New Jersey, 379 U.S. 674 (1965), a holder of unclaimed property must report and remit that property to the state of the owner's last known address as shown in the holder's books and records. If the holder does not have a last known address for the owner, then the holder must report and remit the property to the state where the holder is incorporated. The unclaimed property laws of the state where the property is reportable govern the holding period and what is reportable. (7-1-98)

**02. Reciprocity Agreements.** A holder located in Idaho may report and remit property reportable to another state to the administrator of the Idaho Unclaimed Property Act if ~~the administrator has entered into a reciprocity agreement with~~ there are ten (10) or fewer properties to report with a value of one thousand dollars (\$1,000) or less, and the other state. ~~A list of those states that the administrator has entered into~~ allows for reciprocity agreements with ~~can be obtained from the office of the State Treasurer.~~ If property reportable to another state is reported and remitted to the administrator, that property will be transferred to the other state in accordance with the reciprocity agreement. (7-1-98)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**015. REPORT OF ABANDONED PROPERTY (RULE 015).**

**01. Incomplete Report.** A report filed with the office of the State Treasurer must meet the requirements of a valid tax return as set out in Section 14-517, Idaho Code. A report that does not meet the statutory requirements may be returned to the holder as incomplete. Any report returned to the holder as incomplete will not be treated as filed in compliance with Section 14-517, Idaho Code. (5-8-09)

**02. Voluntary Payments of Unclaimed Property.** A holder who voluntarily reports and remits any intangible property, as defined in Section 14-501, Idaho Code, with a total value of fifty dollars (\$50) or less to the administrator is relieved of all liability in accordance with Section 14-520, Idaho Code, as long as the owner name or other identifying information about the rightful owner is included in the report. Aggregate amounts of unclaimed property will not be accepted. The administrator will remit the funds to the appropriate state. (3-20-04)( )

**03. Underlying Shares and Cumulative Dividends.** The holder must report and remit total cumulative dividends to date, together with the stock certificate or the electronic equivalent of the stock certificate, when the certificate or equivalent is in the holder's possession, if the value of total cumulative dividends plus the value of the underlying shares belonging to the apparent owner is more than fifty dollars (\$50). (4-11-06)

**016. FILING A CLAIM WITH ADMINISTRATOR (RULE 016).**

**01. Interest.** Interest on interest bearing items will accrue from March 31, 1980, or date received, whichever is later, for a maximum of ten (10) years. No interest will be paid on items that are reported as interest bearing, unless the holder reports the rate of interest. (7-1-98)

**02. Payment of Claims - Claims Process.** (8-24-94)

**a.** Warrants will be authorized and payment made: (8-24-94)

**i.** In the name of, and mailed to, the established owner; or (8-24-94)

**ii.** To the court appointed estate administrator, administratrix, executor, executrix, or personal representative; or (8-24-94)

**iii.** To the court appointed guardian; or (8-24-94)

**iv.** In accordance with a court decree of distribution; or (8-24-94)

**v.** To an heir for distribution to other heirs; if any. (8-24-94)

**b.** Owner, Cashier's Checks: (8-24-94)

**i.** The owner of a cashier's check is presumed to be the payee unless the remitter has in his possession the cashiers check. (8-24-94)

**ii.** A payee is presumed to have received payment for a cashier's check or other instrument, and the payee must establish that the check was not cashed and that the owner is not, in fact, a holder in due course. (8-24-94)

**c.** It shall be the responsibility of the payee to disburse any funds or property in accordance with any existing contract or agreement. (8-24-94)

**d.** When one (1) claimant, who has proven that he has an interest in the unclaimed property, has been paid the full amount of unclaimed property held by the office of the State Treasurer, there is no requirement that the office of the State Treasurer pay other subsequent claimants. The office of the State Treasurer is not required to locate all heirs of owners of unclaimed property. (7-1-98)

**e.** If there are two (2) or more owners of unclaimed property, or the reported account is in the name of the tenants in common, or the holder report does not specify the percentage or share of co-owners, the office of the State Treasurer shall pay each owner an equal share of the account. (7-1-98)

~~**f.** Before payment of a claim for lost stock or bond certificates, a surety bond may be required of the owner/claimant which bond shall indemnify the office of the State Treasurer against claims by third parties. (7-1-98)~~

**gf.** Approved utility deposit claim forms and proof of payment to the claimant shall be retained by the utility company for a period of seven (7) years from the date the claim is paid. (7-1-98)

**hg.** The burden is on the claimant to provide sufficient proof to establish the elements of the claim, and it is the claimant's responsibility to contact persons and to search out documents relating to the claim. (4-11-06)

## **IDAPA 57- SEXUAL OFFENDER MANAGEMENT BOARD**

### **57.01.01 - RULES GOVERNING THE SEXUAL OFFENDER MANAGEMENT BOARD**

#### **DOCKET NO. 57-0101-1201**

#### **NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING**

**AUTHORITY:** In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Section 18-8314, Idaho Code.

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

Information on date, time and location for public meeting(s) will be posted on the agency website: [www.somb.idaho.gov](http://www.somb.idaho.gov).

**METHOD OF PARTICIPATION:** Persons interested in participating in the negotiated rulemaking process are encouraged to:

Participate in a public meeting on the proposed standards for psychosexual evaluations and evaluators; sexual offender treatment and treatment providers; and/or

Submit written comments and recommendations to the proposed standards which will be posted on the agency website. Comments may be submitted via an on-line comment form, or via mail to the undersigned, or via e-mail to [somb@idoc.idaho.gov](mailto:somb@idoc.idaho.gov). Responses must be received by November 26, 2012.

Failure of interested persons to respond to this notice of intent or the lack of a sufficient number of responses to this notice of intent may result in the discontinuation of further informal proceedings. In either event the agency shall have sole discretion in determining the feasibility of scheduling and conducting informal negotiated rulemaking and may proceed directly to formal rulemaking if proceeding with negotiated rulemaking is deemed infeasible.

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

The Sexual Offender Management Board is responsible for setting standards and qualifications for psychosexual evaluations and evaluators; sexual offender treatment and treatment providers; and sexual offender-specific polygraphs and the providers who conduct these polygraphs. The agency is currently developing these standards and procedures for provider certification. The standards will be incorporated into the agency's administrative rules after finalization of the document. Associated administrative rule language will be drafted at that time. Negotiated rulemaking will encompass finalization of the standards document.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING COPIES:** For assistance on technical questions concerning this negotiated rulemaking or to obtain a copy of the preliminary draft of the proposed standards contact Kathy Baird at (208) 658-2149.

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 26, 2012.

DATED this 28th day of September, 2012.

Kathy Baird, Management Assistant  
Sexual Offender Management Board  
1299 N Orchard St., Suite 110  
Boise, ID 83706  
Phone: (208) 658-2149  
Fax: (208) 327-7102  
[www.somb.idaho.gov](http://www.somb.idaho.gov)

# Sections Affected Index

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## **IDAPA 01 - BOARD OF ACCOUNTANCY**

### *01.01.01 - Idaho Accountancy Rules*

#### Docket No. **01-0101-1201**

004. Incorporation By Reference (Rule 004).....	23
---	----

## **IDAPA 02 - DEPARTMENT OF AGRICULTURE**

### *02.03.03 - Rules Governing Pesticide and Chemigation Use and Application*

#### Docket No. **02-0303-1201**

050. Private Applicator Licensing.....	26
--	----

### *02.04.19 - Rules Governing Domestic Cervidae*

#### Docket No. **02-0419-1201**

011. Abbreviations.....	29
450. Tuberculosis.....	29

### *02.04.21 - Rules Governing the Importation of Animals*

#### Docket No. **02-0421-1201**

011. Abbreviations.....	31
102. Extended Validity Equine Certificates.....	32
202. When Permits Are Required For Cattle.....	32
261. -- 299. (Reserved).....	33
300. Equidae.....	33
601. Testing Requirements.....	34
606. Movement Of Cervidae Between AZA and USDA Facilities.....	34
650. Fish.....	34

### *02.06.13 - Rules Relating to Rapeseed Production and Establishment of Rapeseed Districts In the State of Idaho*

#### Docket No. **02-0613-1201**

004. Definitions.....	37
150. Requirements For All Brassica Seeds To Be Planted In Idaho.....	38

### *02.06.14 - Rules Governing Annual Bluegrass (Poa annua)*

#### Docket No. **02-0614-1201**

200. Rules Governing Planting Of Regulated Articles.....	40
201. -- 249. (Reserved).....	40
250. Infested Seed Stock.....	40
251. -- 299. (Reserved).....	40
300. Application For Nursery Inspection.....	40

### *02.06.16 - Rules Governing Honey Standards*

#### Docket No. **02-0616-1201 (New Chapter)**

000. Legal Authority.....	42
001. Title And Scope.....	42
002. Written Interpretations.....	42
003. Administrative Appeal.....	42
004. Incorporation By Reference.....	42
005. Office -- Office Hours -- Mailing Address And Street Address.....	42
006. Public Records Act Compliance.....	42
007. -- 009. (Reserved).....	43
010. Definitions.....	43
011. Complaint Process.....	43
012. -- 014. (Reserved).....	44
015. Standards Of Identity - Honey.....	44
016. Types And Styles Of Honey.....	45



017. -- 022. (Reserved).....	45
023. Misbranding.....	45
024. Penalty.....	45
025. -- 999. (Reserved).....	45
<b>02.06.31 - Noxious Weed Free Forage and Straw Certification Rules</b>	
Docket No. <b>02-0631-1201</b>	
001. Title And Scope.....	47
010. Definitions.....	47
100. Voluntary Noxious Weed Free Forage And Straw Certification Program.....	49
101. -- 149. (Reserved).....	52
150. North American Noxious Weed List.....	52
250. Certification Marking.....	54
<b>02.06.33 - Organic Food Product Rules</b>	
Docket No. <b>02-0633-1201 (Fee Rule)</b>	
010. Definitions.....	57
200. Idaho Organic Certification Seal.....	58
201. Registration Of Approved Materials.....	59
202. -- 299. (Reserved).....	60
<b>02.06.35 - Rules Governing Rough Bluegrass (<i>Poa trivialis</i>)</b>	
Docket No. <b>02-0635-1201</b>	
101. Qualifications Of Regulated Articles For Quarantine Release.....	62
102. Rough Bluegrass Quarantine - Inspections.....	62

**IDAPA 03 - STATE ATHLETIC COMMISSION**

<b>03.01.01 - Rules of the State Athletic Commission</b>	
Docket No. <b>03-0101-1201 (Fee Rule)</b>	
103. Physical Examination Of Combatant (Rule 103).....	65
104. Fees (Rule 104).....	65
107. Female Combatants (Rule 107).....	66
111. Requirements For License As Ring Official (Rule 111).....	67
150. Renewal Of License (Rule 150).....	67
210. -- 297. (Reserved).....	68
298. Event Results And Medical Reporting (Rule 298).....	68
731. Martial Arts And Mixed Martial Arts (MMA) (Rule 731).....	68
732. MMA Equipment (Rule 732).....	68
803. Wrestlers -- Physical Examination (Rule 803).....	70

**IDAPA 06 - BOARD OF CORRECTION**

<b>06.01.01 - Rules of the Board of Correction</b>	
Docket No. <b>06-0101-1202</b>	
013. Department Fee Structure.....	72
014. -- 103. (Reserved).....	73
117. Department Visitors.....	73
312. Deceased Offenders.....	73
504. -- 510. (Reserved).....	75
511. Access To Department Properties.....	75

**IDAPA 07 - DIVISION OF BUILDING SAFETY**

<b>07.02.03 - Rules Governing Permit Fee Schedule</b>	
Docket No. <b>07-0203-1201</b>	
011. Fee Schedule.....	78

*07.02.04 - Rules Governing Plumbing Safety Inspections*  
 Docket No. **07-0204-1201**  
 011. Required Inspections. .... 82

*07.02.06 - Rules Concerning Uniform Plumbing Code*  
 Docket No. **07-0206-1201**  
 001. Title And Scope. .... 84  
 011. Adoption And Incorporation By Reference Of The Idaho State Plumbing Code. .... 84

*07.03.01 - Rules of Building Safety*  
 Docket No. **07-0301-1201**  
 004. Adoption And Incorporation By Reference. .... 97  
 Docket No. **07-0301-1202**  
 004. Adoption And Incorporation By Reference. .... 101

*07.03.12 - Rules Governing Manufactured or Mobile Home Installations*  
 Docket No. **07-0312-1201 (Fee Rule)**  
 013. Installation Permits And Inspections Required. .... 105  
 014. Installation Permit Fees. .... 105  
 015. Installation Tags Required. .... 105  
 016. Approval Of Local Manufactured Home Installation Inspection Programs. .... 106  
 017. Withdrawal Of Approval Of Programs. .... 106  
 018. Minimum Training Requirements For Inspectors. .... 106  
 019. Quality Assurance. .... 106  
 020. Minimum Scope Of Installation Inspection. .... 107  
 021. Supervision By Responsible Managing Employee. .... 107  
 022. License Suspension Or Revocation. .... 107  
 023. -- 999. (Reserved). .... 107

*07.07.01 - Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems*  
 Docket No. **07-0701-1201**  
 005. Adoption And Incorporation By Reference Of The International Fuel Gas Code, 2009 Edition. 109  
 006. Adoption And Incorporation By Reference Of Part V (Mechanical) And Part VI (Fuel Gas) Of The International Residential Code For One (1)- And Two (2)-Family Dwellings, 2009 Edition. .. 110  
 Docket No. **07-0701-1202**  
 006. Adoption And Incorporation By Reference Of Part V (Mechanical) And Part VI (Fuel Gas) Of The International Residential Code For One (1)- And Two (2)-Family Dwellings, 2009 Edition. .. 112  
 007. Office -- Office Hours -- Mailing Address And Street Address. .... 113  
 012. Definitions. .... 113

**IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION**

*08.01.10 - Idaho College Work Study Program*  
 Docket No. **08-0110-1201**  
 000. Legal Authority. .... 116  
 001. Title And Scope. .... 116  
 002. Written Interpretations. .... 116  
 003. Administrative Appeals. .... 116  
 004. Incorporation By Reference. .... 116  
 005. Office Information. .... 116  
 006. Public Records Act Compliance. .... 116  
 007. -- 099. (Reserved) .... 116  
 101. Institutional Participation. .... 116  
 102. Allocation Of Funds. .... 117  
 105. Distribution Of Funds. .... 117  
 106. Carryover Funds. .... 117  
 107. -- 999. (Reserved) .... 118

*08.01.11 - Registration of Post-Secondary Educational Institutions and Proprietary Schools*

Docket No. **08-0111-1201**

100. Recognition Of Accreditation Organizations. .... 120

101. -- 199. (Reserved)..... 120

200. Registration Of Post-Secondary Educational Institutions..... 120

300. Registration Of Proprietary Schools..... 122

301. Approval Standards for Registration of Proprietary Schools..... 124

*08.02.02 - Rules Governing Uniformity*

Docket No. **08-0202-1203**

004. Incorporation By Reference. .... 129

Docket No. **08-0202-1204**

016. Idaho Educator Credential. .... 131

021. Endorsements..... 132

022. Endorsements A - D..... 132

023. Endorsements E - L..... 134

024. Endorsements M - Z..... 135

029. Consulting Teacher/Teacher Leader Endorsement..... 137

Docket No. **08-0202-1205**

120. Local District Evaluation Policy - Teacher And Pupil Personnel Certificate Holders. .... 141

121. Local District Evaluation Policy - Administrative Certificate Holders..... 144

Docket No. **08-0202-1206**

037. -- 041. (Reserved)..... 149

042. Alternate Routes To Certification. .... 151

043. Alternative Authorization – Teacher To New Certification..... 152

044. Alternative Authorization -- Content Specialist..... 152

045. Computer-Based Alternative Route To Teacher Certification. .... 153

046. (Reserved) ..... 154

*08.02.03 - Rules Governing Thoroughness*

Docket No. **08-0203-1205**

004. Incorporation By Reference. .... 156

Docket No. **08-0203-1206**

008. Definitions H - S. .... 160

*08.02.04 - Rules Governing Public Charter Schools*

Docket No. **08-0204-1201**

010. Definitions. .... 164

011. -- 099. (Reserved)..... 164

100. Limitations On New Public Charter Schools. .... 164

101. -- 199. (Reserved)..... 165

200. Procedure For Formation Of A New Public Charter School..... 165

201. Policies And Procedures Adopted By An Authorized Chartering Entity..... 166

203. Admission Procedures..... 166

205. Review Of Petitions..... 169

206. Withdrawal Of Petition; Referral Of Petition To The Commission..... 171

301. Authorized Chartering Entity Responsibilities. .... 172

302. Charter Revisions..... 172

402. Appeal To The Board Relating To The Denial Of A Request To Form A New  
Public Charter School. .... 173

403. Appeal Relating To The Denial Of A Request To Revise A Charter  
Or A Charter Revocation Decision. .... 175

500. Miscellaneous. .... 176

**08.03.01 - Rules of the Public Charter School Commission****Docket No. 08-0301-1201**

300. Petition -- Submission. ....	179
301. Compliance Monitoring. ....	179
302. Required Documents Public Charter Schools Authorized By The Commission Must Submit To The Commission. ....	181
303. -- 399. (Reserved) .....	181
401. Petition -- Format. ....	181

**IDAPA 11 - IDAHO STATE POLICE****11.11.01 - Rules of the Idaho Peace Officer Standards and Training Council****Docket No. 11-1101-1202**

010. Definitions. ....	191
059. Physical - Medical. ....	194
197. General Provisions. ....	195

**11.11.02 - Rules of the Idaho Peace Officer Standards and Training Council  
for Juvenile Detention Officers****Docket No. 11-1102-1201**

030. Juvenile Detention Officer Certification. ....	197
033. Part-Time Juvenile Detention Officer Certification. ....	198
035. Higher Certification. ....	199
036. Intermediate Certificate. ....	199
037. (Reserved) .....	200
038. Lapse Of Juvenile Detention Officer Certification. ....	200
039. -- 999. (Reserved) .....	200

**11.11.03 - Rules of the Idaho Peace Officer Standards and Training Council  
for Juvenile Probation Officers****Docket No. 11-1103-1201**

030. Juvenile Probation Officer Certification. ....	202
033. Higher Certification. ....	202
034. Intermediate Certificate. ....	203
035. (Reserved) .....	203
036. Lapse Of Juvenile Probation Officer Certification. ....	203
037. -- 999. (Reserved) .....	204

**11.11.04 - Rules of the Idaho Peace Officer Standards and Training Council for Correction Officers  
and Adult Probation and Parole Officers****Docket No. 11-1104-1201**

039. Physical -- Medical. ....	206
051. Lapse Of Correction Officer Certification. ....	206
062. Lapse Of Adult Probation And Parole Officer Certification. ....	207

**11.11.06 - Rules of the Idaho Peace Officer Standards and Training Council  
for Misdemeanor Probation Officers****Docket No. 11-1106-1201**

030. Misdemeanor Probation Officer Certification. ....	209
--	-----

**IDAPA 12 - DEPARTMENT OF FINANCE****12.01.10 - Rules Pursuant to the Idaho Residential Mortgage Practices Act****Docket No. 12-0110-1201**

005. Incorporation By Reference (Rule 5).....	212
006. Definitions (Rule 6).....	212

**IDAPA 13 - IDAHO FISH AND GAME COMMISSION**

*13.01.02 - Rules Governing Public Safety*

Docket No. **13-0102-1201**

000. Legal Authority.....	215
001. Title And Scope.....	215
010. Definitions.....	215
101. Mentored Hunting Program.....	215
102. -- 999. (Reserved).....	216

*13.01.04 - Rules Governing Licensing*

Docket No. **13-0104-1201**

505. Deer And Elk Tag Allocation.....	218
600. Nonresident Deer And Elk Tag Quotas.....	219
701. Governor's Wildlife Partnership Tags.....	220
702. -- 799. (Reserved).....	221

*13.01.04 - Rules Governing Licensing*

Docket No. **13-0104-1202**

010. Definitions.....	223
400. Landowner Appreciation Program.....	224

*13.01.07 - Rules Governing the Taking of Upland Game Animals*

Docket No. **13-0107-1201**

101. -- 199. (Reserved).....	228
------------------------------	-----

*13.01.08 - Rules Governing the Taking of Big Game Animals in the State of Idaho*

Docket No. **13-0108-1201**

271. -- 299. (Reserved).....	230
410. Unlawful Methods Of Take.....	230

Docket No. **13-0108-1202**

201. Tag Exception For Companion To Disabled Hunter.....	234
202. -- 249. (Reserved).....	234
260. Tags For Controlled Hunts.....	235

Docket No. **13-0108-1203**

260. Tags For Controlled Hunts.....	242
-------------------------------------	-----

Docket No. **13-0108-1204**

411. Motorized Hunting Rule.....	248
412. Designated Motorized Hunting Rule Units.....	249

Docket No. **13-0108-1205**

260. Tags For Controlled Hunts.....	251
-------------------------------------	-----

*13.01.09 - Rules Governing the Taking of Game Birds in the State of Idaho*

Docket No. **13-0109-1201**

100. Tags, Stamps, Permits, And Validations.....	257
101. Tag Exception For Companion To Disabled Hunter.....	259
102. -- 199. (Reserved).....	259

Docket No. **13-0109-1202**

100. Tags, Stamps, Permits, And Validations.....	261
--	-----

Docket No. **13-0109-1203**

200. Identification Of Species In Possession And During Transportation Or Shipment.....	264
400. Areas Closed To Hunting Of Game Birds.....	264
600. Pheasant Seasons, Bag And Possession Limits.....	266

Docket No. **13-0109-1204**

302. -- 399. (Reserved).....	269
------------------------------	-----

13.01.16 - The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals

Docket No. 13-0116-1201

400. Methods Of Take..... 271
600. Trapping On Game Preserves And Wildlife Management Areas..... 272

13.01.17 - Rules Governing the Use of Bait for Taking Big Game Animals

Docket No. 13-0117-1201

000. Legal Authority..... 275
001. Title And Scope..... 275
100. Use Of Bait For Hunting..... 275
201. -- 399. (Reserved)..... 276
400. Trapping Big Game Animals..... 276
401. -- 449. (Reserved)..... 278
450. Traps..... 278
451. -- 459. (Reserved)..... 278
460. Mandatory Check And Report Requirements..... 278
461. Mandatory Wolf Trapper Education Class..... 279
462. -- 499. (Reserved)..... 279
500. Identification Of Animals That Legally May Be Taken; Tag Validation And Attachment And Proxy Statement; Identification Of Sex, Size, And/or Species In Possession And During Transportation Or Shipment..... 279
501. -- 504. (Reserved)..... 279
505. Areas Closed To Hunting And Trapping, And Trapping On Game Preserves And Wildlife Management Areas..... 279
506. -- 999. (Reserved)..... 279

IDAPA 15 - OFFICE OF THE GOVERNOR MILITARY DIVISION - BUREAU OF HOMELAND SECURITY

15.06.03 - Public Safety Communications Rules

Docket No. 15-0603-1201 (Fee Rule - New Chapter)

000. Legal Authority (Rule 0)..... 282
001. Title And Scope (Rule 1)..... 282
002. Written Interpretations (Rule 2)..... 282
003. Adoption Of Attorney General's Idaho Rules Of Procedure (Rule 3)..... 282
004. (Reserved)..... 282
005. Office, Office Hours, Mailing Address, Telephone Numbers (Rule 5)..... 282
006. (Reserved)..... 282
007. Communication With Military Division, Bureau Of Homeland Security (Rule 7)..... 282
008. -- 009. (Reserved)..... 283
010. Definitions (Rule 10)..... 283
011. Abbreviations (Rule 11)..... 284
012. -- 099. (Reserved)..... 284
100. Fees (Rule 100)..... 284
101. -- 999. (Reserved)..... 286

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.04 - Rules Governing the Food Stamp Program in Idaho

Docket No. 16-0304-1201

214. Child Custody..... 288

Docket No. 16-0304-1202

012. Definitions M Through Z..... 290
108. -- 109. (Reserved)..... 292

110. Applicants Who Move Out Of Idaho .....	292
155. Expedited Service Eligibility .....	292
535. Medical Expenses .....	293
<b>16.03.05 - Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)</b>	
Docket No. <b>16-0305-1201</b>	
835. Applying The Penalty Period Of Restricted Coverage .....	296
Docket No. <b>16-0305-1202</b>	
512. Room And Board Home Allowance.....	298
513. Residential Care Or Assisted Living Facility And Certified Family Home Allowances. ....	298
<b>16.03.09 - Medicaid Basic Plan Benefits</b>	
Docket No. <b>16-0309-1205</b>	
399. Covered Services Under Basic Plan Benefits .....	301
413. Outpatient Hospital Services: Procedural Requirements .....	303
560. Healthy Connections And Idaho Medicaid Health Home: Definitions.....	304
561. Healthy Connections: Participant Eligibility .....	305
562. Healthy Connections: Coverage And Limitations.....	306
563. Healthy Connections: Procedural Requirements .....	307
564. Healthy Connections: Provider Qualifications And Duties.....	308
565. Healthy Connections: Provider Reimbursement .....	309
566. Healthy Connections: Quality Assurance .....	310
567. -- 569. (Reserved).....	310
570. Idaho Medicaid Health Home: Definitions .....	310
571. Idaho Medicaid Health Home: Participant Eligibility .....	310
572. Idaho Medicaid Health Home: Coverage And Limitations.....	311
573. Idaho Medicaid Health Home: Procedural Requirements .....	311
574. Idaho Medicaid Health Home: Provider Qualifications And Duties .....	311
575. (Reserved) .....	313
576. Idaho Medicaid Health Home: Quality Assurance.....	313
577. -- 579. (Reserved).....	313
616. -- 617. (Reserved).....	313
618. Health Questionnaire .....	313
619. (Reserved) .....	313
Docket No. <b>16-0309-1206</b>	
880. Early Periodic Screening, Diagnosis, And Treatment (EPSDT) Services: Definition .....	315
<b>16.03.10 - Medicaid Enhanced Plan Benefits</b>	
Docket No. <b>16-0310-1201</b>	
036. General Reimbursement .....	317
037. General Reimbursement: Participant Services .....	317
038. General Reimbursement: Types Of Participant Services .....	318
307. Personal Care Services: Provider Reimbursement.....	319
Docket No. <b>16-0310-1202</b>	
009. Criminal History And Background Check Requirements.....	322
010. Definitions: A Through D .....	323
321. Aged Or Disabled Waiver Services: Definitions .....	327
322. Aged Or Disabled Waiver Services: Eligibility .....	328
323. Aged Or Disabled Waiver Services: Participant Eligibility Determination.....	329
326. Aged Or Disabled Waiver Services: Coverage And Limitations.....	330
328. Aged Or Disabled Waiver Services: Procedural Requirements .....	336
329. Aged Or Disabled Waiver Services: Provider Qualifications And Duties .....	339
330. Aged Or Disabled Waiver Services: Provider Reimbursement .....	345
703. Adult DD Waiver Services: Coverage And Limitations.....	345
705. Adult DD Waiver Services: Provider Qualifications And Duties .....	350

**16.03.10 - Medicaid Enhanced Plan Benefits****Docket No. 16-0310-1203**

075. Enhanced Plan Benefits: Covered Services. ....	357
215. - 219. (Reserved) .....	358
511. Adult Developmental Disability Services Prior Authorization: Coverage And Limitations. ....	358
512. Adult Developmental Disability Services Prior Authorization: Procedural Requirements.....	359
513. Adult Developmental Disability Services Prior Authorization: Plan Of Service. ....	360
521. Children's Developmental Disability Prior Authorization (PA): Definitions. ....	363
523. (Reserved) .....	364
526. Children's Developmental Disability Prior Authorization (PA): Plan Of Service Process. ....	365
527. Children's Developmental Disability Prior Authorization (PA): Provider Reimbursement. ....	366
634. -- 648. (Reserved).....	367
649. Developmental Therapy. ....	368
650. Developmental Therapy: Eligibility. ....	368
651. Developmental Therapy: Coverage Requirements And Limitations.....	369
652. Developmental Therapy: Procedural Requirements For Individuals With An ISP.....	372
653. Developmental Therapy: Procedural Requirements For Individuals With An IPP.....	373
654. Developmental Therapy: Procedural Requirements. ....	378
655. Developmental Therapy: Provider Qualifications And Duties.....	386
656. General Staffing Requirements. ....	391
657. Developmental Therapy: Provider Reimbursement. ....	393
658. -- 659. (Reserved).....	393
660. Children's Home And Community Based Services (HCBS) State Plan Option.....	393
660. Children's Home And Community Based Services (HCBS) State Plan Option.....	394
661. Children's HCBS State Plan Option: Definitions. ....	394
662. Children's HCBS State Plan Option: Participant Eligibility. ....	395
664. Children's HCBS State Plan Option: Procedural Requirements. ....	395
665. Children's HCBS State Plan Option: Provider Qualifications And Duties.....	396
680. Children's Waiver Services. ....	399
684. Children's Waiver Services: Procedural Requirements.....	400
685. Children's Waiver Services: Provider Qualifications And Duties.....	401
721. Service Coordination: Definitions. ....	405
726. Service Coordination: Eligibility: Individuals Up To The Age Of Twenty-One. ....	406
729. Service Coordination: Provider Qualifications.....	408
731. Service Coordination: Plan Development -- Written Plan.....	409

**Docket No. 16-0310-1205**

011. Definitions: E Through K. ....	412
012. Definitions: L Through O. ....	415
257. Nursing Facility: Development Of The Rate. ....	418
258. Nursing Facility: Cost Limits Based On Cost Report.....	419
266. Nursing Facility: Behavioral Care Unit (BCU) And Rate Structure. ....	420
267. Nursing Facility: New Behavioral Care Unit (BCU). ....	423
268. Nursing Facility: Existing Provider Elects To Add Behavioral Care Unit (BCU).....	424
269. Nursing Facility: New Owner Of An Existing Nursing Facility With A Behavioral Care Unit (BCU). ....	424
270. Nursing Facility: Special Rates. ....	424
622. ICF/ID: Principle Prospective Rates. ....	426

**16.04.02 - Idaho Telecommunication Service Assistance Program Rules****Docket No. 16-0402-1201**

000. Legal Authority. ....	428
001. Title, Scope, And Purpose. ....	428
002. Written Interpretations. ....	428



003. Administrative Appeals.....	428
004. Incorporation By Reference.....	428
005. Office Hours -- Mailing Address -- Street Address -- Telephone -- Website.....	428
006. Confidentiality Of Records And Public Records Requests.....	428
007. -- 009. (Reserved).....	429
010. Definitions.....	429
011. -- 099. (Reserved).....	430
100. Assistance Eligibility Requirements.....	430
101. -- 109. (Reserved).....	430
110. Assistance Discount Rate.....	430
111. -- 399. (Reserved).....	430
601. -- 999. (Reserved).....	430

**IDAPA 17 - INDUSTRIAL COMMISSION**

*17.02.09 - Medical Fees*

Docket No. **17-0209-1201**

030. Definitions.....	432
031. Acceptable Charges For Medical Services Provided By Physicians Under The Idaho Workers' Compensation Law.....	433
033. Acceptable Charges For Medicine Provided By Pharmacies.....	436
034. Acceptable Charges For Medical Services Provided By Other Providers Under The Idaho Workers' Compensation Law.....	436
035. Billing And Payment Requirements For Medical Services And Procedures Preliminary To Dispute Resolution.....	437
036. -- 999. (Reserved).....	438

**IDAPA 20 - DEPARTMENT OF LANDS**

*20.02.01 - Rules Pertaining to the Idaho Forest Practices Act*

Docket No. **20-0201-1201**

010. Definitions.....	440
011. -- 019. (Reserved).....	446
020. General Rules.....	446
021. -- 029. (Reserved).....	449
030. Timber Harvesting.....	449
050. Residual Stocking And Reforestation.....	453

*20.03.14 - Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation,  
and Communication Site Leases*

Docket No. **20-0314-1201**

001. Title And Scope.....	457
010. Definitions.....	457
020. Applications And Processing.....	458
021. Length Of Lease.....	461
022. -- 029. (Reserved).....	461
030. Change In Land Use.....	461
031. -- 039. (Reserved).....	461
040. Rental.....	462
050. Lease Cancellation.....	462
053. Extensions Of Annual Farming Lease Payment.....	462
054. -- 059. (Reserved).....	463
080. Management Plans.....	463
081. -- 089. (Reserved).....	463
090. Trespass.....	464

105. Conflict Auctions. ....	464
111. Noxious Weed Control. ....	465
114. Liability (Indemnity). ....	465
<b>20.03.15 - The Issuance of Geothermal Resource Leases</b>	
Docket No. <b>20-0315-1201</b>	
001. Title And Scope. ....	467
010. Definitions. ....	467
020. Qualified Applicants And Lessees. ....	469
021. -- 029. (Reserved) ....	470
035. Rentals. ....	470
036. Royalties. ....	470
037. -- 039. (Reserved) ....	471
040. Size Of A Leasable Tract. ....	471
041. -- 049. (Reserved) ....	472
050. Land Surface Use Rights And Obligations. ....	472
051. -- 053. (Reserved) ....	473
054. Exploration Under The Lease. ....	473
055. Development And Production Under The Lease. ....	474
056. Waste Prevention, Drilling And Production Obligations. ....	475
057. -- 059. (Reserved) ....	476
060. Exploration And Operation Records, Confidentiality. ....	476
070. Water Rights. ....	477
071. -- 074. (Reserved) ....	477
075. Assignments. ....	477
085. Unit Or Cooperative Plans Of Development Or Operation. ....	479
095. Surrender, Termination, Expiration Of Lease. ....	480
096. -- 099. (Reserved) ....	481
100. Bond Requirements. ....	481
102. -- 104. (Reserved) ....	481
106. -- 110. (Reserved) ....	482

**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- 1201**

006. Office -- Office Hours -- Mailing Address And Street Address. ....	484
007. Filing Of Documents - Number Of Copies. ....	484
050. General Qualifications For Licensure And Renewal. ....	484
081. Physician Panelist For Prelitigation Consideration Of Medical Malpractice Claims. ....	486
<b>22.01.02 - Rules of the Board of Medicine for the Registration of Externs, Interns, and Residents</b>	
Docket No. <b>22-0102-1201 (Fee Rule)</b>	
006. Office -- Office Hours -- Mailing Address And Street Address. ....	489
007. Filing Of Documents -- Number Of Copies. ....	489
010. Definitions. ....	489
011. -- 015. (Reserved) ....	490
016. Requirements For Registration Of Externs, Interns, And Residents. ....	490
017. General Provisions For Registration. ....	491
018. Fees. ....	492
<b>22.01.03 - Rules for the Licensure of Physician Assistants</b>	
Docket No. <b>22-0103-1201 (Fee Rule)</b>	
022. Temporary License. ....	494

023. -- 025. (Reserved).....	494
051. Fees -- License Issuance, Renewal, Cancellation And Reinstatement.....	494
<b>22.01.11 - Rules for Licensure of Respiratory Therapists and Permitting of Polysomnographers in Idaho</b>	
Docket No. <b>22-0111-1201</b>	
006. Office -- Office Hours -- Mailing Address And Street Address. ....	497
007. Filing Of Documents -- Number Of Copies.....	497
010. Definitions. ....	497
032. Application For Licensure And Permits. ....	500
<b>22.01.13 - Rules for the Licensure of Dietitians</b>	
Docket No. <b>22-0113-1201 (Fee Rule)</b>	
006. Office -- Office Hours -- Mailing Address And Street Address. ....	507
007. Filing Of Documents -- Number Of Copies.....	507
008. Severability. ....	507
009. (Reserved) .....	507
032. Denial Or Refusal To Renew, Suspension Or Revocation Of License.....	507
033. -- 040. (Reserved).....	508
041. Fees. ....	508
<b>22.01.14 - Rules Relating to Complaint Investigation</b>	
Docket No. <b>22-0114-1201</b>	
002. Written Interpretations.....	511
006. Office -- Office Hours -- Mailing Address And Street Address. ....	511
007. Filing Of Documents -- Number Of Copies.....	511
008. -- 009. (Reserved).....	511
010. Complaints. ....	511
011. Format For Submission Of Complaint.....	511
012. Determination Of Authority.....	511
013. Complaint Authority.....	512
014. -- 019. (Reserved).....	512
020. Report Of Investigation. ....	513
021. Tracking. ....	513
022. Authority To Close Complaints/Cases. ....	514
023. Other Indicators For Investigation. ....	514

**IDAPA 23 - BOARD OF NURSING****23.01.01 - Rules of the Idaho Board of Nursing**Docket No. **23-0101-1201**

271. Definitions Related To Advanced Practice Registered Nursing.....	517
272. -- 279. (Reserved).....	519
280. Standards Of Practice For Advanced Practice Registered Nursing.....	519
281. -- 284. (Reserved).....	520
285. Qualifications For Advanced Practice Registered Nurse. ....	521
286. -- 289. (Reserved).....	522
290. Application For Licensure -- Advanced Practice Registered Nurse. ....	522
291. -- 294. (Reserved).....	522
295. Temporary Licensure -- Advanced Practice Registered Nurse.....	522
296. -- 299. (Reserved).....	523
300. Renewal Of Advanced Practice Registered Nurse License.....	523
301. Reinstatement Of Advanced Practice Registered Nurse License.....	524
302. -- 304. (Reserved).....	524
305. Persons Exempted From Advanced Practice Registered Nursing License Requirements.....	524
315. Prescriptive And Dispensing Authorization For Advanced Practice Registered Nurses.....	524

317. -- 319. (Reserved).....	526
320. Recognition Of National Certifying Organizations For Advanced Practice Registered Nursing. ....	526
321. -- 389. (Reserved).....	528
390. Use Of Titles, Abbreviations, And Designations For The Practice Of Nursing.....	528
<b>23.01.01 - Rules of the Idaho Board of Nursing</b>	
Docket No. <b>23-0101-1202</b>	
000. Legal Authority. ....	530
010. Definitions. ....	530
011. -- 039. (Reserved).....	532
040. Temporary License. ....	532
076. Persons Exempted By Board. ....	533
077. Multistate Licensure. ....	534
078. -- 089. (Reserved).....	537
090. Denial Of License.....	537
101. Standards Of Conduct.....	538
220. Qualifications For Licensure By Examination.....	540
240. Qualifications For Licensure By Endorsement. ....	541
241. Licensure By Equivalency And Endorsement Licensure.....	541
242. -- 259. (Reserved).....	542
260. Qualifications For Licensure Of Graduates Of Schools Of Nursing Located Outside The United States, Its Territories, Or Commonwealths. ....	542
261. Application For Licensure Of Graduates Of Schools Of Nursing Located Outside The United States, Its Territories, Or Commonwealths. ....	542

**IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

<b>24.01.01 - Rules of the Board of Architectural Examiners</b>	
Docket No. <b>24-0101-1201</b>	
010. Definitions (Rule 10).....	544
350. Registration Examination (Rule 350). ....	544
375. Architectural Intern (Rule 375). ....	545
376. -- 399. (Reserved).....	545
400. Miscellaneous Requirements (Rule 400). ....	545
410. Use Of An Architect's Seal (Rule 410). ....	546
550. Interpretations (Rule 550). ....	546
<b>24.04.01 - Rules of the Idaho Board of Cosmetology</b>	
Docket No. <b>24-0401-1201 (Fee Rule)</b>	
176. Application For Permit To Practice, Demonstrate, Or Teach Cosmetology. (Rule 176). ....	548
600. Instructor Rules (Rule 600). ....	548
800. Inspection And Sanitary Rules. (Rule 800). ....	549
<b>24.06.01 - Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants</b>	
Docket No. <b>24-0601-1201</b>	
004. Incorporation By Reference. ....	552
011. Supervision. ....	552
025. Continuing Education. ....	554
<b>24.10.01 - Rules of the State Board of Optometry</b>	
Docket No. <b>24-1001-1201</b>	
150. Meeting Of The Board (Rule 150). ....	557
175. Method Of Application-examination Of Applicants (Rule 175). ....	558
200. Approval Of Schools Of Optometry (Rule 200). ....	558
300. Continuing Education In Optometry (Rule 300). ....	559

301. -- 324. (Reserved).....	559
325. Code Of Ethics (Rule 325).....	559
326. -- 424. (Reserved).....	560
425. Rules Defining Gross Incompetence (Rule 425).....	561
426. -- 449. (Reserved).....	562
450. Prescriptions For Spectacles And Contact Lenses (Rule 450).....	562
451. -- 474. (Reserved).....	563
475. Patients Records (Rule 475).....	563
575. Fees (Rule 575).....	563
576. -- 599. (Reserved).....	563
600. Board Certification Of Optometrist Authorized To Obtain And Use Pharmaceutical Agents (Rule 600).....	563
<b>24.12.01 - Rules of the Idaho State Board of Psychologist Examiners</b>	
Docket No. <b>24-1201-1201</b>	
402. Guidelines For Approval Of Continuing Education Credits (Rule 402).....	567
<b>24.14.01 - Rules of the State Board of Social Work Examiners</b>	
Docket No. <b>24-1401-1201</b>	
010. Definitions (Rule 10).....	570
201. Practice Of Social Work (Rule 201).....	570
202. -- 209. (Reserved).....	572
210. Supervision (Rule 210).....	572
211. Social Work Supervisor Registration (Rule 211).....	574
212. -- 224. (Reserved).....	575
225. Inactive Status (Rule 225).....	575
350. Examinations, Endorsement, And Board Meetings (Rule 350).....	575
450. Statement Of Public Policy And Code Of Professional Conduct (Rule 450).....	576
<b>24.15.01 - Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists</b>	
Docket No. <b>24-1501-1201</b>	
004. Incorporation By Reference (Rule 4).....	581
238. Marriage And Family Therapists (Rule 238).....	581
425. Continuing Education (Rule 425).....	582
501. -- 524. (Reserved).....	584
525. Documentation Of Informed Consent (Rule 525).....	584
526. -- 549. (Reserved).....	585
<b>24.17.01 - Rules of the State Board of Acupuncture</b>	
Docket No. <b>24-1701-1201</b>	
301. Renewal Or Reinstatement Of License (Rule 301).....	587
302. Inactive Status (Rule 302).....	587
303. -- 304. (Reserved).....	587
305. Continuing Education Requirements (Rule 305).....	587
308. -- 399. (Reserved).....	589
401. Records (Rule 401).....	589
402. Disclosure Of Fees (Rule 402).....	589
403. Employment Of Unlicensed, Non-Exempt Individuals (Rule 403).....	589
404. Supervision Of Trainees And Technicians (Rule 404).....	590
405. Advertising (Rule 405).....	590
406. -- 499. (Reserved).....	590
<b>24.23.01 - Rules of the Speech and Hearing Services Licensure Board</b>	
Docket No. <b>24-2301-1201</b>	
175. Fees (Rule 175).....	592

201. -- 204. (Reserved).....	592
205. Inactive Status (Rule 205).....	592
206. -- 209. (Reserved).....	592
220. Qualifications For Speech-Language Pathologist Licensure (Rule 220).....	593
450. Provisional Permit: Fitting And Dealing Hearing Aids (Rule 450).....	593
451. -- 459. (Reserved).....	595
460. Provisional Permit: Speech-Language Pathology (Rule 460).....	595
461. -- 469. (Reserved).....	596
470. Provisional Permit: Audiology (Rule 470).....	596
471. -- 499. (Reserved).....	597
<i>24.25.01 - Rules of the Idaho Driving Businesses Licensure Board</i>	
Docket No. <b>24-2501-1201</b>	
225. Driving Business License (Rule 225).....	599
<i>24.27.01 - Rules of the Idaho State Board of Massage Therapy</i>	
Docket No. <b>24-2701-1201 (Fee Rule - New Chapter)</b>	
000. Legal Authority.....	602
001. Title And Scope.....	602
002. Written Interpretations.....	602
003. Administrative Appeal.....	602
004. Incorporation By Reference.....	602
005. Office -- Office Hours -- Mailing Address And Street Address.....	602
006. Public Records Act Compliance.....	603
007. Open Meetings.....	603
008. -- 009. (Reserved).....	603
010. Definitions.....	603
011. Update Of Records.....	603
012. -- 099. (Reserved).....	603
100. Organization And Operations Of The Board.....	603
101. -- 199. (Reserved).....	604
200. Application.....	604
250. Fees.....	604
300. Requirements For Original Licensure.....	604
301. -- 304. (Reserved).....	605
305. Approved Examinations.....	605
306. Written Statement Of Suitability For Licensure.....	606
307. -- 309. (Reserved).....	606
310. Requirements For Licensure By Endorsement.....	606
311. -- 399. (Reserved).....	607
400. Renewal Or Expiration Of License.....	607
401. -- 499. (Reserved).....	607
500. Continuing Education.....	607
501. Approval Of Continuing Education Courses.....	608
502. Continuing Education Activities.....	609
503. Content Of Continuing Education.....	609
504. -- 599. (Reserved).....	610
600. Educational Program Standards.....	610
700. Scope Of Practice.....	610
701. -- 799. (Reserved).....	610
750. Standards Of Practice.....	610
800. Code Of Ethics.....	610
801. -- 899. (Reserved).....	610
900. Discipline.....	610
901. -- 999. (Reserved).....	611

**IDAPA 25 - IDAHO OUTFITTERS AND GUIDES LICENSING BOARD**

25.01.01 - Rules of the Idaho Outfitters and Guides Licensing Board

Docket No. **25-0101-1202**

051. Placement Of Hunting Camps And Leaving Outfitter's Operating Area, Big Game Hunting And Incidental Trapping. ....	618
---	-----

**IDAPA 27 - BOARD OF PHARMACY**

27.01.01 - Rules of the Idaho State Board of Pharmacy

Docket No. **27-0101-1201**

013. Waivers Or Variances. ....	622
016. Board Of Pharmacy Licensure And Registration. ....	623
018. License And Registration: Reinstatement. ....	623
021. Fee Schedule. ....	624
034. Pharmacist Inactive Status License. ....	626
052. CPE: Requirements. ....	627
110. Prescription Drug Order: Validity. ....	627
115. Prescription Drug Order: Transfers. ....	628
204. Controlled Substances: PMP. ....	629
330. Pharmacist: Administered Immunizations. ....	630
331. -- 359. (Reserved).....	631
360. Student Pharmacist: Utilization And Practice Limitations.....	631
361. -- 399. (Reserved).....	632
601. Pharmacy Space And Fixtures.....	632
631. Institutional Facility: Emergency Drug Access And Pharmacist Absence.....	632
640. Institutional Facility: Offsite Pharmacy Practice Standards.....	634
750. DME Outlet Standards. ....	634

Docket No. **27-0101-1202**

010. Definitions and Abbreviations (A -- I). ....	636
011. Definitions and Abbreviations (J -- R). ....	638
012. Definitions and Abbreviations (S -- Z). ....	641
019. License And Registration: Inspection.....	641
031. Pharmacist Licensure By Examination: Foreign Pharmacy Graduates.....	642
036. Student Pharmacist Registration.....	642
041. Technician-In-Training Registration. ....	643
042. Pharmacy Technician Certification: Continuous Employment Exemption.....	643
131. Drug Product: Selection. ....	643
140. Standard Prescription Drug Labeling. ....	643
142. Parenteral Admixture Labeling.....	644
200. Controlled Substances: Positive Identification Required.....	645
206. Controlled Substances: Inventories. ....	646
260. Drug Product Storage. ....	646
262. Restricted Return Of Drugs Or Devices. ....	646
503. Prescription Delivery Restrictions. ....	647
600. Pharmacy Registrant And PIC Or Director.....	647
602. Pharmacy Technical Equipment. ....	648
605. Pharmacy Security.....	648
606. Pharmacy Notification And Advertising Of Hours Open For Business.....	649
609. Pharmacy Change Of Ownership Or Permanent Closing.....	649
622. Institutional Pharmacy: Director: Minimum Responsibilities.....	650
637. Institutional Facility: Emergency Outpatient Drug Delivery By Hospital Emergency Rooms.....	651
713. -- 729. (Reserved).....	652
730. Out-of-State Mail Service Pharmacy. ....	652
731. -- 749. (Reserved).....	652

**27.01.01 - Rules of the Idaho State Board of Pharmacy**

**Docket No. 27-0101-1203**

290. ADS Systems: Minimum Standards ..... 654  
 291. Ads Systems: Self-Service Systems ..... 656  
 292. ADS Systems: Institutional Facilities ..... 657  
 293. Vending Machines ..... 659  
 294. -- 299. (Reserved) ..... 659  
 632. Institutional Facility: Emergency Drug Supply Preparation And Monitoring. .... 659

**Docket No. 27-0101-1204**

011. Definitions And Abbreviations (J -- R) ..... 661  
 130. Drug Product: Substitution ..... 663  
 500. Unprofessional Conduct ..... 663

**Docket No. 27-0101-1205 (Fee Rule)**

010. Definitions and Abbreviations (A -- I) ..... 666  
 011. Definitions And Abbreviations (J -- R) ..... 669  
 021. Fee Schedule ..... 671  
 022. -- 028. (Reserved) ..... 673  
 029. Pharmacist License Or Registration ..... 673  
 035. Pharmacist Registration To Practice Pharmacy Into Idaho ..... 674  
 060. Drug Outlet Licensure And Registration ..... 674  
 071. Remote Dispensing Site Registration ..... 675  
 073. Nonresident Central Drug Outlet And Mail Service Pharmacy Registration ..... 675  
 074. -- 079. (Reserved) ..... 675  
 090. Manufacturer Registration ..... 676  
 320. Pharmacist: Independent Practice ..... 676  
 600. PIC Or Director ..... 676  
 610. Centralized Pharmacy Services ..... 676  
 611. -- 619. (Reserved) ..... 677  
 641. Institutional Facility: Offsite Services -- First Dose Pharmacy ..... 677  
 642. -- 649. (Reserved) ..... 678  
 650. Institutional Facility: Centralized Pharmacy Services ..... 678  
 651. -- 669. (Reserved) ..... 679  
 680. -- 699. (Reserved) ..... 679

**Docket No. 27-0101-1206**

210. Controlled Substances: Schedule I ..... 680  
 211. -- 219. (Reserved) ..... 681

**IDAPA 28 - IDAHO DEPARTMENT OF COMMERCE**

**28.02.05 - Rural Community Block Grant Program (RCBG)**

**Docket No. 28-0205-1201**

011. Eligible Applicants ..... 683

**IDAPA 35 - IDAHO STATE TAX COMMISSION**

**35.01.01 - Income Tax Administrative Rules**

**Docket No. 35-0101-1201**

130. Deduction Of Certain Retirement Benefits (Rule 130) ..... 686  
 131. -- 139. (Reserved) ..... 687  
 140. Deduction For Energy Efficiency Upgrades (Rule 140) ..... 687  
 171. Idaho Capital Gains Deduction -- Qualified Property (Rule 171) ..... 688  
 290. Tax Paid By Pass-Through Entities For Officers, Directors, Owners, Or Beneficiaries --  
 Election For Taxable Years Beginning On Or After January 1, 2011,  
 And Before January 1, 2012 (Rule 290). .... 691



291.	Tax Paid By Pass-Through Entities For Owners Or Beneficiaries -- Computation Of Idaho Taxable Income For Taxable Years Beginning On Or After January 1, 2012 (Rule 291).	691
714.	Idaho Investment Tax Credit: Credit Earned On Property Used Both In And Outside Idaho In Taxable Years Beginning On Or After January 1, 1995 (Rule 714).	693
877.	Backup Withholding By Pass-Through Entities (Rule 877).	694
<b>35.01.01 - Income Tax Administrative Rules</b>		
Docket No. <b>35-0101-1202</b>		
075.	Tax On Individuals, Estates, And Trusts (Rule 075).	698
105.	Adjustments To Taxable Income -- Additions Required Of All Taxpayers (Rule 105).	701
108.	Adjustments To Taxable Income -- Additions Required Only Of Individuals (Rule 108).	702
121.	Adjustments To Taxable Income -- Subtractions Available Only To Individuals (Rule 121).	703
253.	Nonresident And Part-Year Resident Individuals -- Additions Required In Computing Idaho Adjusted Income.	705
285.	S Corporations (Rule 285).	706
286.	S Corporations Operating Within And Without Idaho (Rule 286).	707
710.	Idaho Investment Tax Credit: In General (Rule 710).	708
719.	Idaho Investment Tax Credit: Property Tax Exemption In Lieu Of (Rule 719).	709
745.	Credit For Qualifying New Employees: Revenue-Producing Enterprise (Rule 745).	712
746.	Credit For Qualifying New Employees: Calculations Used To Determine The Credit And Credit Carryover (Rule 746).	712
747.	Credit For Qualifying New Employees: Net Income Of A Trade Or Business (Rule 747).	714
748.	Credit For Qualifying New Employees: Record-Keeping Requirements (Rule 748).	715
771.	Grocery Credit: Taxable Years Beginning After December 31, 2007 (Rule 771).	715
810.	Time For Filing Income Tax Returns (Rule 810).	717
<b>35.01.02 - Sales Tax Administrative Rules</b>		
Docket No. <b>35-0102-1201</b>		
024.	Rentals Or Leases Of Tangible Personal Property (Rule 024).	719
037.	Aircraft And Flying Services (Rule 037).	721
043.	Sales Price Or Purchase Price Defined (Rule 043).	724
044.	Trade-Ins, Trade-downs And Barter (Rule 044).	725
072.	Application And Payment Of Use Tax (Rule 072).	727
095.	Money-Operated Dispensing Equipment (Rule 095).	729
101.	Motor Vehicles And Trailers Used In Interstate Commerce (Rule 101).	729
109.	Amusement Devices (Rule 109).	730
128.	Certificates For Resale And Other Exemption Claims (Rule 128).	731
<b>35.01.03 - Property Tax Administrative Rules</b>		
Docket No. <b>35-0103-1202</b>		
604.	(Reserved)	738
605.	Property Exempt From Taxation - Property Used For School Or Educational Purposes (Rule 605).	738
606. -- 608.	(Reserved)	738
620.	Exemption For Never Occupied Residential Improvements and Commercial, Industrial, and Residential Site Improvements (Rule 620).	738
Docket No. <b>35-0103-1203</b>		
131.	Use Of Ratio Study To Test For Equalization In Counties (Rule 131).	742
604. -- 607.	(Reserved)	744
608.	Property Exempt From Taxation - Homestead - Continued Eligibility After Death Of Claimant (Rule 608).	744
630.	Tax Exemption For New Capital Investments (Rule 630).	744
995.	Certification Of Sales Tax Distribution (Rule 995).	746
Docket No. <b>35-0103-1204</b>		
600.	Property Exempt From Taxation (Rule 600).	749
803.	Budget Certification -- Dollar Certification Form (L-2 Form) (Rule 803).	749

**35.01.03 - Property Tax Administrative Rules**

Docket No. **35-0103-1205**

218. Assessor's Plat Book (Rule 218) ..... 756

Docket No. **35-0103-1207**

000. Legal Authority (Rule 000) ..... 759  
 003. Administrative Appeals (Rule 003) ..... 759  
 006. Incorporation By Reference (Rule 006) ..... 760  
 225. Documentation For Newly Organized Or Altered Taxing Districts Or Revenue Allocation Areas (RAAs) Under The Jurisdiction Of Urban Renewal Agencies (Rule 225) ..... 761  
 313. Assessment Of Transient Personal Property (Rule 313) ..... 764  
 404. Operator's Statement -- Contents (Rule 404) ..... 766  
 509. City, County, School District, And Special District Or Unit Of Government Abstracts Of Value And Identification Of Urban Renewal Increment And Partial Exemption Values (Rule 509) ..... 767  
 510. Secondary Categories For Land - Listing And Reporting (Rule 510) ..... 768  
 511. Secondary Categories For Improvements - Listing And Reporting (Rule 511) ..... 772  
 612. Property Exempt From Taxation -- Motor Vehicles, Recreational Vehicles, And Vessels Properly Registered (Rule 612) ..... 774  
 619. Property Exempt From Taxation -- Facilities For Water Or Air Pollution Control (Rule 619) ... 775  
 802. Budget Certification Relating To New Construction And Annexation (Rule 802) ..... 776

**35.01.09 - Table and Kitchen Wine Tax Administrative Rules**

Docket No. **35-0109-1201**

014. Security For Tax Required (Rule 014) ..... 783  
 016. Wine Tax Returns And Reports (Rule 016) ..... 785

**35.01.10 - Idaho Cigarette and Tobacco Products Tax Administrative Rules**

Docket No. **35-0110-1201**

017. Security For Tax Required (Rule 017) ..... 788

**35.01.12 - Idaho Beer Tax Administrative Rules**

Docket No. **35-0112-1201**

013. Security For Tax Required (Rule 013) ..... 792  
 017. Beer Tax Returns And Reports (Rule 017) ..... 794

**35.02.01 - Administration and Enforcement Rules**

Docket No. **35-0201-1201**

225. Proceedings On Levy Or Distraint (Rule 225) ..... 797  
 310. Interest Rates (Rule 310) ..... 797  
 500. Settlements (Rule 500) ..... 798  
 704. Disclosure Of Information: Government Agencies And Officials (Rule 704) ..... 799

**IDAPA 36 - IDAHO BOARD OF TAX APPEALS**

**36.01.01 - Idaho Board of Tax Appeals Rules**

Docket No. **36-0101-1201**

000. Legal Authority (Rule 0) ..... 803  
 001. Title And Scope (Rule 1) ..... 803  
 003. Administrative Appeals (Rule 3) ..... 803  
 004. Incorporation By Reference ..... 803  
 005. Office -- Office Hours -- Addresses (Rule 5) ..... 803  
 006. Public Records Act Compliance (Rule 6) ..... 803  
 007. -- 009. (Reserved) ..... 803  
 010. Definitions (Rule 10) ..... 803  
 012. Organization (Rule 12) ..... 804  
 013. -- 019. (Reserved) ..... 804  
 020. Procedure Governed (Rule 20) ..... 804

022. Citation (Rule 22).....	805
023. -- 029. (Reserved).....	805
030. Representation And Practice Before The Board (Rule 30).....	805
031. Initial Pleading -- Listing Of Representatives (Rule 31).....	805
032. Substitution Of Representative (Rule 32).....	805
033. Participation By Taxing Authority (Rule 33).....	806
034. (Reserved).....	806
035. Conduct (Rule 35).....	806
036. Enforcement (Rule 36).....	806
037. Ex Parte Communications (Rule 37).....	806
038. -- 044. (Reserved).....	806
045. Notice Of Appeal: Contents (Rule 45).....	806
046. Notice Of Appeal: BOE Appeals (Rule 46).....	807
047. Notice Of Appeal: STC Appeals (Rule 47).....	808
048. Acknowledgment (Rule 48).....	808
049. (Reserved).....	808
050. Answer To Appeal (Rule 50).....	808
051. (Reserved).....	809
052. County Auditor Requirement (Rule 52).....	809
053. -- 054. (Reserved).....	809
055. Consolidation (Rule 55).....	809
056. -- 059. (Reserved).....	810
060. Form Of Pleadings (Rule 60).....	810
061. Service Of Documents (Rule 61).....	811
062. Defective, Insufficient Or Late Pleading (Rule 62).....	811
063. -- 064. (Reserved).....	812
065. Computation Of Time (Rule 65).....	812
066. Filing (Rule 66).....	812
067. -- 069. (Reserved).....	812
070. Prehearing Conference (Rule 70).....	812
071. (Reserved).....	813
072. Motions (Rule 72).....	813
073. (Reserved).....	814
074. Briefs (Rule 74).....	814
075. Discovery (Rule 75).....	814
076. -- 084. (Reserved).....	815
085. Intervention (Rule 85).....	815
086. -- 089. (Reserved).....	816
090. Consent Agreement -- Defined -- Form And Contents (Rule 90).....	816
091. -- 099. (Reserved).....	817
100. Fair Hearing (Rule 100).....	817
101. Failure To Appear (Rule 101).....	818
102. Withdrawal (Rule 102).....	818
103. (Reserved).....	818
104. Alternative Dispute Resolution (Rule 104).....	818
105. Informal Disposition -- Settlement (Rule 105).....	818
106. Presiding Officer (Rule 106).....	819
107. Procedure And Testimony (Rule 107).....	819
108. -- 109. (Reserved).....	820
110. Stipulations (Rule 110).....	820
111. Continuance (Rule 111).....	820
112. -- 114. (Reserved).....	820

115. Official Notice (Rule 115).....	820
117. Rules Of Evidence (Rule 117).....	821
118. Exhibit (Rule 118).....	821
119. -- 124. (Reserved).....	822
125. Confidentiality -- Protective Orders (Rule 125).....	822
126. -- 134. (Reserved).....	822
135. Scope Of Appeal In Ad Valorem Case (Rule 135).....	822
136. -- 139. (Reserved).....	822
140. Decisions And Orders (Rule 140).....	822
141. -- 144. (Reserved).....	823
145. Reconsideration -- Rehearing (Rule 145).....	823
146. -- 150. (Reserved).....	823
151. Official Record (Rule 151).....	823
152. -- 154. (Reserved).....	824
155. Subpoena (Rule 155).....	824
156. -- 164. (Reserved).....	825
165. Request For Transcript (Rule 165).....	825

**IDAPA 37 - DEPARTMENT OF WATER RESOURCES***37.03.03 - Rules and Minimum Standards for the Construction and Use of Injection Wells*Docket No. **37-0303-1201**

001. Title And Scope (Rule 1).....	827
010. Definitions (Rule 10).....	827
011. -- 014. (Reserved).....	835
015. Violations, Formal Notification And Enforcement (Rule 15).....	835
016. -- 019. (Reserved).....	835
020. Hearing Before The Water Resource Board (Rule 20).....	836
021. -- 024. (Reserved).....	836
025. Exemption From Drinking Water Source Designation (Rule 25).....	836
026. -- 029. (Reserved).....	841
030. Severability (Rule 30).....	841
031. -- 034. (Reserved).....	841
035. Classification Of Injection Wells (Rule 35).....	841
036. -- 039. (Reserved).....	846
040. Authorizations, Prohibitions and Exemptions.....	846
041. -- 044. (Reserved).....	848
045. Class II: Application Information.....	848
046. -- 047. (Reserved).....	858
048. Class II: Application Processing.....	858
049. -- 050. (Reserved).....	863
051. Class II: Permit Conditions.....	863
052. -- 053. (Reserved).....	869
054. Class II: Operating Requirements.....	869
055. -- 056. (Reserved).....	872
057. Class II: Actions On Approved Permits.....	872
058. -- 059. (Reserved).....	875
060. Class II: General Provisions.....	875
061. -- 069. (Reserved).....	878
070. Class V: Criteria And Standards. (Rule 70).....	878
071. -- 999. (Reserved).....	890

**IDAPA 38 - DEPARTMENT OF ADMINISTRATION**

*38.04.06 - Rules Governing Use of the Exterior of State Property In the Capitol Mall and Other State Facilities*

Docket No. **38-0406-1202 (New Chapter)**

000. Legal Authority.....	893
001. Title And Scope.....	893
002. Written Interpretations.....	893
003. Administrative Appeals.....	893
004. Incorporation By Reference.....	893
005. Office -- Office Hours -- Mailing And Street Address.....	893
006. Public Records Act Compliance.....	894
007. Severability.....	894
008. -- 009. (Reserved).....	894
010. Definitions.....	894
011. -- 100. (Reserved).....	895
101. Other State Properties.....	895
102. Multi-Agency Facilities.....	896
103. -- 199. (Reserved).....	896
200. Use Of State Facilities.....	896
201. Event And Exhibit Duration.....	897
202. Equipment And Supplies.....	897
203. Establishment Of Perimeters.....	897
204. Area Closures.....	897
205. -- 299. (Reserved).....	897
300. Restrictions And Limitations On Use.....	897
301. Uses Interfering With Access Or Use Of Facility.....	898
302. Hours And Locations Of Use.....	898
303. Motorized Vehicles.....	898
304. Bicycles, Skates, Skateboards, Scooters, And Other Non-Motorized Transportation.....	898
305. Animals.....	898
306. Landscaping.....	899
307. Food And Beverages.....	899
308. Smoking.....	899
309. Fires, Candles, And Flames.....	899
310. Posters, Placards, Banners, Signs, Equipment, Tables, Materials, And Displays.....	899
311. Items Subject To Search.....	900
312. Prohibited Items.....	900
313. Sound Level And Amplification.....	900
314. Utility Service.....	900
315. Law Enforcement And Facility Exigency.....	900
316. Compliance With Law.....	901
317. Health, Safety, And Maintenance Of State Facilities.....	901
318. -- 399. (Reserved).....	901
400. Liability And Indemnification.....	901
401. -- 999. (Reserved).....	901

*38.04.07 - Rules Governing Use of the Interior of State Property In the Capitol Mall and Other State Facilities*

Docket No. **38-0407-1202 (New Chapter)**

000. Legal Authority.....	904
001. Title And Scope.....	904
002. Written Interpretations.....	904
003. Administrative Appeals.....	904

004.	Incorporation By Reference.....	904
005.	Office -- Office Hours -- Mailing And Street Address.....	904
006.	Public Records Act Compliance.....	905
007.	Severability.....	905
008. --	009. (Reserved).....	905
010.	Definitions.....	905
011. --	100. (Reserved).....	906
101.	Other State Properties.....	906
102.	Multi-Agency Facilities.....	907
103. --	199. (Reserved).....	907
200.	Use Of Interior State Facilities.....	907
201. --	299. (Reserved).....	907
300.	Restrictions And Limitations On Use.....	907
301.	Uses Interfering With Access Or Use Of Facility.....	907
302.	Hours And Locations Of Use.....	907
303.	Bicycles, Skates, Skateboards, Scooters, And Other Non-Motorized Transportation.....	908
304.	Animals.....	908
305.	Food And Beverages.....	908
306.	Smoking.....	908
307.	Fires, Candles, And Flames.....	908
308.	Limits On Use Of Common Space.....	908
309.	Items Subject To Search.....	909
310.	Prohibited Items.....	909
311.	Utility Service.....	909
312.	Law Enforcement And Facility Exigency.....	909
313.	Compliance With Law.....	909
314.	Maintenance Of Interior State Facilities.....	909
315. --	999. (Reserved).....	909
<b>38.04.08 - Rules Governing Use of Idaho State Capitol Exterior</b>		
<b>Docket No. 38-0408-1202 (New Chapter)</b>		
000.	Legal Authority.....	912
001.	Title And Scope.....	912
002.	Written Interpretations.....	912
003.	Administrative Appeals.....	912
004.	Incorporation By Reference.....	912
005.	Office -- Office Hours -- Mailing And Street Address.....	912
006.	Public Records Act Compliance.....	913
007.	Severability.....	913
008. --	009. (Reserved).....	913
010.	Definitions.....	913
011. --	199. (Reserved).....	914
200.	Use Of State Capitol Exterior.....	914
201.	Event And Exhibit Duration.....	915
202.	Equipment And Supplies.....	915
203.	Establishment Of Perimeters.....	915
204.	Area Closures.....	915
205. --	299. (Reserved).....	915
300.	Restrictions And Limitations On Use.....	915
301.	Uses Interfering With Access Or Use Of Facility.....	915
302.	Hours And Locations Of Use.....	915
303.	Motorized Vehicles.....	916
304.	Bicycles, Skates, Skateboards, Scooters, And Other Non-Motorized Transportation.....	916

305. Animals.....	916
306. Landscaping.....	917
307. Food And Beverages.....	917
308. Smoking.....	917
309. Fires, Candles, And Flames.....	917
310. Posters, Placards, Banners, Signs, Equipment, Tables, Materials, And Displays.....	917
311. Items Subject To Search.....	918
312. Prohibited Items.....	918
313. Sound Level And Amplification.....	918
314. Utility Service.....	918
315. Law Enforcement And Facility Exigency.....	919
316. Compliance With Law.....	919
317. Health, Safety And Maintenance Of State Facilities.....	919
318. -- 399. (Reserved).....	919
400. Permits.....	919
401. Approvals And Denials Of A Permit Application.....	920
402. Revocation Of A Permit.....	921
403. Appeals.....	921
404. -- 499. (Reserved).....	922
500. Liability And Indemnification.....	922
501. -- 999. (Reserved).....	922

**IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT**

*39.02.61 - Rules Governing License Plates for Governmental Agencies and Taxing Districts*

Docket No. **39-0261-1201**

000. Legal Authority.....	924
001. Title And Scope.....	924
002. Written Interpretations.....	924
003. Administrative Appeals.....	924
004. Incorporation By Reference.....	924
005. Office -- Office Hours -- Mailing And Street Address -- Phone Numbers.....	924
006. Public Records Act Compliance.....	924
007. -- 009. (Reserved).....	924
010. Definitions.....	924
200. Issuing Agency.....	925
201. -- 299. (Reserved).....	925
300. Information To Be Provided By An Authorized Agency.....	925
301. -- 399. (Reserved).....	925
400. Vehicle Titling.....	925
401. -- 499. (Reserved).....	925
500. Exempt And Undercover Plate Fees.....	925
601. Undercover Plate Display.....	926
602. -- 699. (Reserved).....	926
801. Undercover Plate Status.....	926
802. -- 999. (Reserved).....	926

*39.02.71 - Rules Governing Driver's License Violation Point System*

Docket No. **39-0271-1201**

005. Office -- Office Hours -- Mailing And Street Address -- Phone Numbers.....	928
006. Public Records Act Compliance.....	928
007. -- 099. (Reserved).....	928
100. Violation Point Count System.....	928
101. -- 199. (Reserved).....	928
200. List Of Moving Traffic Convictions And/Or Violations Point Count.....	928

**39.03.42 - Rules Governing Highway Right-of-Way Encroachments on State Rights-of-Way**Docket No. **39-0342-1201 (Fee Rule)**

000. Legal Authority.....	932
003. Administrative Appeal.....	932
004. Incorporation By Reference.....	933
005. Office – Office Hours – Mailing Address And Street Address – Phone Numbers.....	933
006. Public Records Act Compliance.....	933
007. -- 009. (Reserved).....	933
010. Definitions.....	933
011. -- 099. (Reserved).....	941
100. General.....	941
101. -- 199. (Reserved).....	942
200. Applications And Permits.....	942
300. General Regulations For Approaches.....	943
301. -- 399. (Reserved).....	945
400. Location And Design Standards For Approaches.....	945
402. Auxiliary Lanes.....	952
403. -- 499. (Reserved).....	952
500. Location And Design Standards For Utilities.....	952
501. -- 599. (Reserved).....	953
600. Location And Design Standards For Other Encroachments.....	953
601. -- 699. (Reserved).....	956
700. Application Fees.....	956
701. --799. (Reserved).....	958
800. Unauthorized And Nonstandard Encroachments.....	958

**IDAPA 47 - DIVISION OF VOCATIONAL REHABILITATION****47.01.01 - Rules of the Idaho Division of Vocational Rehabilitation**Docket No. **47-0101-1202**

004. Incorporation By Reference.....	960
005. -- 009. (Reserved).....	960
010. Definitions.....	960
011. -- 099. (Reserved).....	961
100. Customer Appeals.....	961
101. Informal Review Process.....	961
102. Mediation.....	962
103. Fair Hearing Process.....	962
104. -- 199. (Reserved).....	964
200. Order Of Selection.....	964
201. -- 299. (Reserved).....	964
300. Customer Services.....	964

**IDAPA 52 - IDAHO STATE LOTTERY****52.01.02 - Gaming Rules of the Idaho State Lottery Commission**Docket No. **52-0102-1201**

115. Limits On Bingo Operation's Prize Payout Ratios And Administrative Expenses (Rule 115).....	967
204. Requirements For Donation To Charity -- Limitation On Expenses (Rule 204).....	967

**52.01.03 - Rules Governing Operations of the Idaho State Lottery**Docket No. **52-0103-1201 (Fee Rule)**

100. General Provisions (Rule 100).....	969
---	-----



*52.01.03 - Rules Governing Operations of the Idaho State Lottery*

Docket No. **52-0103-1202**

100. General Provisions (Rule 100).....	976
204. On-Line Computer Games (Rule 204).....	981

**IDAPA 54 - OFFICE OF THE STATE TREASURER**

*54.03.01 - Idaho Unclaimed Property Administrative Rules*

Docket No. **54-0301-1201**

002. Written Interpretations (Rule 002).....	988
006. Unclaimed Expenses And Checks (Rule 006).....	988
012. General Rules For Taking Custody Of Unclaimed Property (Rule 012).....	988
015. Report Of Abandoned Property (Rule 015).....	989
016. Filing A Claim With Administrator (Rule 016).....	989

# LEGAL NOTICE

## Summary of Proposed Rulemakings

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### **PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES**

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the latest publication of the state Administrative Bulletin.

*The written comment submission deadline is October 24, 2012, unless otherwise noted.  
(Temp & Prop) indicates the rule is both Temporary and Proposed.  
(\*PH) indicates that a public hearing has been scheduled.*

#### **IDAPA 01 - IDAHO BOARD OF ACCOUNTANCY PO Box 83720, Boise, ID 83720-0002**

**01-0101-1201, Idaho Accountancy Rules.** Updates incorporation by reference to the 2012 “Statements on Standards for Continuing Professional Education”.

#### **IDAPA 02 - DEPARTMENT OF AGRICULTURE PO Box 790, Boise, ID 83701**

**02-0303-1201, Rules Governing Pesticide and Chemigation Use and Application.** Creates a license category for soil fumigant application for which a licensed private pesticide applicator may be certified and licensed.

**02-0419-1201, Rules Governing Domestic Cervidae.** Corrects acronym AZA to the American Association of Zoos and Aquarium; allows Administrator to grant exemptions to change of ownership tuberculosis (TB) testing requirement on a case-by-case basis.

**02-0421-1201, Rules Governing Importation of Animals.** Corrects acronym AZA to the American Association of Zoos and Aquarium; clarifies that 2 different diagnostic tests for brucellosis will be performed from one blood sample; expands list of testing exemptions for Red Deer Genetic Factor (RDGF) to include any state or province that has implemented an approved RDGF prevention program for domestic cervidae; expands the tuberculosis testing exemptions to include any cervidae moving between the AZA accredited facilities and those facilities that have a USDA exhibitor permit.

**02-0613-1201, Rules Relating to Rapeseed Production and Establishment of Rapeseed Districts in the State of Idaho.** Updates definitions and revises an outdated testing method.

**02-0614-1201, Rules Governing Annual Bluegrass (*Poa annua*).** Allows for the use of a certificate of analysis in lieu of tags when planting regulated articles; allows nursery and seed inspections to be done by the Idaho Crop Improvement Association and the department.

**02-0616-1201, Rules Governing Honey Standards.** New chapter establishes standards for identity, quality and labeling of honey, complaint procedures and enforcement criteria.

**02-0631-1201, Noxious Weed Free Forage and Straw Certification Rules.** Removes use of blue and orange color certification twine from rule; requires a forage tag date to include the year the bale was produced; clarifies when transit certificates must be issued.

**02-0633-1201, Organic Food Product Rules.** Defines “materials”; increases fees for registration of approved materials; provides industry with a new optional seal for promotional purposes; provides an optional registration of branded materials for organic use.

**02-0635-1201, Rules Governing Rough Bluegrass (*Poa trivialis*).** Allows for the use of a certificate of analysis in lieu of tags when planting regulated articles; allows nursery and seed inspections to be done by the Idaho Crop Improvement Association and the department.

**IDAPA 03 - STATE ATHLETIC COMMISSION  
PO Box 83720 Boise, ID 83720-0063**

**03-0101-1201, Rules of the State Athletic Commission.** Clarifies requirements for male and female combatants age 12 and under; makes all application, license, and permit fees non-refundable; requires promoters to report event results and injuries to a relevant reporting organization; clarifies glove requirements for combatants; clarifies that licenses expire annually and re-issuances require a new application; increases sanction permit fee to \$1,000 per event.

**IDAPA 07 - DIVISION OF BUILDING SAFETY  
PO Box 83720, Meridian, ID 83642**

**07-0203-1201, Rules Governing Permit Fee Schedule.** Eliminates the mandatory requirement that a re-inspection fee be charged for each trip to remove a correction notice (“red tag”) from a plumbing installation.

**07-0204-1201, Rules Governing Plumbing Safety Inspections.** Eliminates reference to a red inspection tag and clarifies that unacceptable plumbing installations are now issued a “Notice of Correction”; clarifies that re-inspection fees will be assessed in accordance with IDAPA 07.02.03 that specifically addresses these fees.

**07-0206-1201, Rules Concerning Uniform Plumbing Code.** Incorporates by reference the Idaho State Plumbing Code published in 2012 that is modeled after the previously incorporated 2009 Uniform Plumbing Code.

**07.03.01 - Rules of Building Safety**

**07-0301-1201,** Incorporates by reference the 2012 editions of the International Building Code and International Existing Building Code that include recent amendments to accessibility standards in commercial facilities and places of public accommodation; additionally drinking fountains and service sinks would be required in businesses with an occupancy load of more than 30 persons, except for restaurants and mercantile establishments.

**07-0301-1202,** Makes amendments to the 2009 Residential Code and the 2009 Energy Code; when a permit is purchased to perform work on an existing dwelling that involves the exterior, electrical work, or alteration or repairs of non-combustion plumbing or mechanical work, a carbon monoxide alarm is not necessarily required to be installed; new wood-burning fireplaces must have tight-fitting flue dampers, as opposed to gasketed doors.

**07-0312-1201, Rules Governing Manufactured or Mobile Home Installations.** Changes comply with federal HUD requirements for inspections of new and used manufactured and mobile home installations; inspections will be done by either the Division of Building Safety or the approved local city or county having jurisdiction; establishes fee schedule for permits obtained from the Division and requires city or county with approved inspection programs to establish their own fee schedule; establishes an installation inspection program by local jurisdictions and training criteria for all inspectors; requires an installation tag for all new manufactured homes to track location and ownership; establishes a quality assurance review process; establishes minimum requirements for each installation inspection.

**07.07.01 - Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems**

**07-0701-1201,** (Temp & Prop) Requires a contractor to test all plastic pipe used for venting flue gases within a dwelling at 5 psi for 15 minutes to prevent potential carbon monoxide leaks.

**07-0701-1202,** Requires carbon monoxide detectors to be installed in dwellings in areas where there is no local building code enforcement; provides a procedure for approval of unlisted appliances; allows Division to require tests of installations to ensure code compliance or to substantiate requests for alternative methods or materials.

**IDAPA 08 - STATE BOARD OF EDUCATION AND STATE DEPARTMENT OF EDUCATION  
PO Box 83720, Boise, ID 83720-0027**

**08-0110-1201, Idaho College Work Study Program.** Simplifies the distribution formula used for allocation of funds to institutions; removes the requirement that work experience be related to the student's “field of study.”

**08-0111-1201, Registration of Post-Secondary Educational Institutions and Proprietary Schools.** Expands the accreditation organization recognized by the Board; amends timeframe for establishing the gross Idaho tuition used for registration to the tax reporting year not the State fiscal year; requires schools to provide students notification in writing information on courses or courses of study that may require a clinical or internship component.

**08-0114-1201, Idaho Rural Physician Incentive Program.** Chapter repeal.

**08.02.02 - Rules Governing Uniformity**

**08-0202-1203,** Updates the incorporation by reference of the Idaho Standards for the Initial Certification of Professional School Personnel.

**08-0202-1204,** Clarifies requirements for renewals of endorsements for certificate holders for Comprehensive Literacy; revises certain standards and endorsements to better align them with national standards and best practices; clarifies that Idaho institutions must align their educator preparation programs specifically to the Idaho Standards for Initial Certification of Professional School Personnel to be approved for teacher certification; revises consulting teacher/teacher leader endorsement to facilitate and advance best practices.

**08-0202-1205,** Increases the rigor and utility of teacher evaluations and adds new section specific to administrator evaluations.

**08-0202-1206,** Removes 3 sections regarding the alternate route to certification process that have expired.

**08.02.03 - Rules Governing Thoroughness**

**08-0203-1205,** Incorporates by reference the 2012 World Class Instructional Design and Assessment (WIDA) English Language Proficiency Standards.

**08-0203-1206,** Adds definitions for “One-to-One Mobile Computing Program” that establishes a mobile computing device program for high school teachers and for “Professional Development” to develop and promote effective instructional practices.

**08-0204-1201, Rules Governing Public Charter Schools.** (Temp & Prop) Numerous changes are intended to improve administrative efficiencies and conform the rule to statutory changes.

**08-0301-1201, Rules of the Public Charter School Commission.** (Temp & Prop) Numerous changes are intended to improve administrative efficiencies and conform the rule to statutory changes.

**IDAPA 11 - IDAHO STATE POLICE  
700 S. Stratford Dr., Meridian, ID 83642**

**11-1101-1202, Rules of the Idaho Peace Officer Standards and Training Council.** Adds 'emergency services dispatchers' to the definition of 'law enforcement profession'; an applicant being investigated by an agency with competent authority and jurisdiction is not eligible for POST certification while under investigation; allows an applicant's medical exam to remain valid beyond 1 year when extended by the Division Administrator under extraordinary conditions and for good cause shown.

**11-1102-1201, Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Detention Officers.** Removes 'physical disability' as an exception in minimum employment standards; removes outdated language in reference to height and weight requirements; establishes the Intermediate Certificate and the requirements for achieving it.

**11-1103-1201, Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Probation Officers.** Removes 'physical disability' as an exception in minimum employment standards; establishes the Intermediate Certificate and the requirements for achieving it.

**11-1104-1201, Rules of the Idaho Peace Officer Standards and Training Council for Correction Officers and Adult Probation and Parole Officers.** Allows an applicant's medical examination to remain valid beyond 1 year when extended by the Division Administrator under extraordinary conditions and for good cause shown; allows an Idaho POST-certified correction officer or probation and parole officer to transfer to an administrative position with the IDOC and retain their POST certification with certain conditions.

**11-1106-1201, Rules of the Idaho Peace Officer Standards and Training Council for Misdemeanor Probation Officers.** Removes 'physical disability' as an exception in minimum employment standards.

**IDAPA 12 - DEPARTMENT OF FINANCE  
800 Park Blvd., Suite 200, Boise, ID 83712**

**12-0110-1201, Rules Pursuant to the Idaho Residential Mortgage Practices Act.** Adds definition of the “Nationwide Mortgage Licensing System and Registry Policy Guidebook”; and updates references to federal laws and regulations.

**IDAPA 13 - IDAHO FISH AND GAME COMMISSION  
PO Box 25, Boise, Idaho 83707**

**13-0102-1201, Rules Governing Public Safety.** Changes chapter name to “Rules Governing Hunter Education and Mentored Hunting” to more accurately reflect the newly established mentored hunting program; creates special authorization to take wildlife, describes a 'mentee' and a 'mentor' for the Mentored Hunting Program.

**13.01.04 - Rules Governing Licensing**

**13-0104-1201, (Temp & Prop)** Allows for adjustments in resident and nonresident elk tag allocation when resident demand exceeds tag availability and nonresident tags are undersubscribed; allows leftover nonresident deer or elk tags as a second tag to residents and nonresidents earlier than September 1; creates the Governor's Wildlife Partnership Tag.

**13-0104-1202, (Temp & Prop)** Implements a one-year waiting period for antlered deer and elk for LAP hunts oversubscribed by a ratio of 2:1 or greater; caps LAP allocation to an additional 10% of regular controlled hunt permit levels in all LAP hunts; and defines 'designated agent(s)' as immediate family, with an option that includes youth, disabled veterans, and/or direct employees as valid designations.

**13-0107-1201, Rules Governing the Taking of Upland Game Animals.** Removes the motorized vehicle use restrictions for these species.

**13.01.08 - Rules Governing the Taking of Big Game Animals in the State of Idaho**

**13-0108-1201, (Temp & Prop)** Allows use of a rimfire weapon to dispatch a wolf in a trap or snare and they may be dispatched in a trap or snare outside of big game hunting hours; addresses what trap sets are legal for wolf trapping.

**13-0108-1202, (Temp & Prop)** Establishes the process designating any controlled hunt tag to a minor child or grandchild, and exempt a disabled hunting companion from possessing a valid game tag when assisting a disabled hunter with a valid tag taking wildlife.

**13-0108-1203, (Temp & Prop)** Establishes rules for use of new Governor's Wildlife Partnership Tags (auction controlled hunt tags) to describe control hunt use, eligibility, and other limitations.

**13-0108-1204, (Temp & Prop)** Clarifies terms used in motorized hunting rule and provides for unit application rather than hunt designation.

**13-0108-1205, (Temp & Prop)** Implements a one-year waiting period for antlered deer and elk LAP hunts oversubscribed by a ratio of 2:1 or greater.

**13.01.09 - Rules Governing the Taking of Game Birds in the State of Idaho**

**13-0109-1201, (Temp & Prop)** Establishes a process for designating any controlled hunt tag to a minor child or grandchild; exempts a disabled hunting companion from possessing a valid game tag when assisting a disabled hunter with a valid tag taking wildlife.

**13-0109-1202, (Temp & Prop)** Specifies that sandhill crane tags must be validated by removing the notches for month and day of kill.

**13-0109-1203, (Temp & Prop)** Changes the WMA Permit marking requirement to require use of non-erasable ink and removal of notch on permits; requires that Eurasian collared doves be left unplucked while in the field or in transport to their final place of consumption to improve identification; allows an exception to the Hagerman WMA hunting closure for Department sponsored waterfowl hunts.

**13-0109-1204, (Temp & Prop)** Removes the Motorized Hunting provisions from rule for these species.

**13-0116-1201, The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals.** (Temp & Prop) Allows trapping on WMAs, defines terms, sets methods of take, reporting requirements, and limits on number of trappers; amends rule to consolidate wolf trapping rules into another rule chapter.

**13-0117-1201, Rules Governing the Use of Bait And Trapping for Taking Big Game Animals.** (Temp & Prop) Consolidates bear baiting and wolf trapping rules into one rule chapter; establishes gray wolf trapping requirements

and methods of take; allows the use of legally salvaged road kill as bait for trapping wolves; allows the use of a trapped wolf carcass without the hide attached as bait; eliminates requirements in Units 10 and 12 to remove bear baits from the field between the summer dog training season and fall season.

**IDAPA 15 - OFFICE OF THE GOVERNOR  
MILITARY DIVISION - BUREAU OF HOMELAND SECURITY  
4040 West Guard St., Bldg. 600, Boise, ID 83705-5004**

*15-0603-1201, Public Safety Communications Rules.* New chapter establishes fees for services.

**IDAPA 16 - IDAHO DEPARTMENT OF HEALTH AND WELFARE  
PO Box 83720, Boise, ID 83720-0036**

**16.03.04 - Rules Governing the Food Stamp Program in Idaho**

*\*16-0304-1201, (\*PH) (Temp & Prop)* Establishes that the parent with the primary physical custody of a child received the food stamp benefit when both parents apply for benefits.

*16-0304-1202, (Temp & Prop)* Aligns rule to state law and federal rules; changes term 'guide dog' to 'service animal'; removes reference to common law marriage; changes operational procedures and updates the application process for screening applicants and removes requirement that an applicant must apply the office serving the area where the applicant resides.

**16.03.05 - Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)**

*\*16-0305-1201, (\*PH) (Temp & Prop)* Aligns the asset transfer penalties for Medicaid applicants under the home and community based services (HCBS) with those applicants who reside in a nursing facility.

*\*16-0305-1202, (\*PH)* Increases the PNA and RUF by the percentage of the COLA increase to more evenly divide future cost of living allowance increases between the participant's personal needs allowance and the rent, utilities, and food.

**16.03.09 - Medicaid Basic Plan Benefits**

*\*16-0309-1205, (\*PH)* Implements a patient-centered medical home model of care by providing for the administration of the Idaho Medicaid Health Home program, which includes Home Health Services, definitions, participant eligibility including coverage and limitations, provider qualifications, procedural requirements, reimbursement structure, and quality assurance.

*\*16-0309-1206, (\*PH)* Adds a definition of medically necessary services for Idaho's Medicaid Early Periodic Screening Diagnosis and Treatment (EPSDT) program.

**16.03.10 - Medicaid Enhanced Plan Benefits**

*\*16-0310-1201, (\*PH)* Provides a process for providers to report costs incurred and for the Department to determine rates based on those reports.

*\*16-0310-1202, (\*PH) (Temp & Prop)* Realigns rule with the Medicaid's Adult Developmental Disabilities and Aged and Disabled Home and Community Based Services (HCBS) waivers that are being updated and are effective October 1, 2012. For Idaho to maintain waiver authority and offer waiver benefits it must submit a new waiver application for each service to CMS and be approved.

*\*16-0310-1203, (\*PH)* Implements the Children's System Redesign that replace developmental therapy and intensive behavioral intervention with new benefits; removes old children's developmental disability agency services from chapter; adds Idaho Infant Toddler Program as an allowable provider for children's DD services; removes children's developmental disability service coordination and replaces it with case management to be delivered by the Department.

*\*16-0310-1205, (\*PH) (Temp & Prop)* Implements new Behavioral Care Units in nursing facilities and intermediate care facilities for people with intellectual disabilities; continues reimbursement methodologies and rates based on current cost reporting years.

*16-0402-1201, Idaho Telecommunication Service Assistance Program Rules.* (Temp & Prop) Aligns rule with federal regulations that increased the eligibility level for services to 135% of the federal poverty guideline; removes and updates obsolete language; removes the "Link Up" benefit program that is no longer available in FCC regulations.

**IDAPA 17 - INDUSTRIAL COMMISSION****PO Box 83720, Boise, ID 83720-0041**

**\*17-0209-1202, *Medical Fees.*** (\*PH) Reduces the number of conversion factors and provides the annual adjustment of the medical fee schedule for physician reimbursement; creates a pharmaceutical fee schedule for pharmacies and dispensing physicians; standardizes the required coding sets used by providers for billing medical services.

**IDAPA 20 - DEPARTMENT OF LANDS****PO Box 83720, Boise, ID 83720-0050**

**\*20-0201-1201, *Rules Pertaining to the Idaho Forest Practices Act.*** (\*PH) Recognizes all alternative conservation measures and formal land-management agreements with US Fish & Wildlife Service and National Marine Fisheries Service; increases flexibility of landowners and operators to perform timber-salvage operations following wildfire, insect infestations, and wind events; provides protection of soils and riparian areas from any ground-based equipment usage in steep, unstable or stream-adjacent areas; assigns responsibility to landowner for reforestation at time of harvest; clarifies definitions of wet areas and the associated equipment-exclusion areas; reduces stocking minimums for drier, southern forest types; allows forest landowners to select between two options for streamside-tree-retention minima for Class I streams (shade rule).

**\*20-0314-1201, *Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases.*** (\*PH) Adds requirements for management proposals; clarifies appeals process procedures for conflicted lease applications; broadens language applicable to multiple lease activities; removes sections regarding rights reserved to the Department and cropland lease hardships claims.

**\*20-0315-1201, *The Issuance of Geothermal Resource Leases.*** (\*PH) Deletes sections relating to leases awarded through auctions, shut downs, sampling, and by-products; removes "contract" language from rule; site and condition-specific language will be negotiated with applicants on a case-by-case basis; clarifies the requirements and process for lease assignments.

**IDAPA 22 - IDAHO BOARD OF MEDICINE****PO Box 83720 Boise, ID 83720-0058**

**\*22-0101-1201, *Rules of the Board of Medicine for the Licensure to Practice Medicine and Surgery and Osteopathic Medicine and Surgery in Idaho.*** (\*PH) Clarifies the purpose for serving as a physician panelist for prelitigation consideration of medical malpractice claims; clarifies document filing process; improves fingerprint reporting security procedures as recommended by law enforcement.

**\*22-0102-1201, *Rules of the Board of Medicine for the Registration of Externs, Interns, and Residents.*** (\*PH) Updates the registration process and delimits duration of registration; redefines terms regarding schools and training programs; improves registration fee schedule to minimize costs for issuance and renewal of registrations.

**\*22-0103-1201, *Rules for the Licensure of Physician Assistants.*** (\*PH) Adds provision for a temporary license, the fee for which may be prorated but cannot exceed \$180.

**\*22-0111-1201, *Rules for Licensure of Respiratory Therapists and Permitting of Polysomnographers in Idaho.*** Provides for enhanced guidance of polysomnographic trainees via direct on-site supervision; prohibits polysomnographic technicians from applying for temporary permits as polysomnographic trainees; requires an original and 1 electronic copy of all documents in contested case proceedings.

**\*22-0112-1201, *Rules Relating to Health Care Workers.*** (\*PH) Chapter repeal.

**\*22-0113-1201, *Rules for the Licensure of Dietitians.*** (\*PH) Adds provisions for the revocation or suspension of a license, disciplinary actions, and denial or refusal of a new application for licensure; increases fees for initial licensure and renewals.

**\*22-0114-1201, *Rules Relating to Complaint Investigation.*** (\*PH) Updates the complaint investigation process and provides explanations and information for those wishing to file a complaint against a licensee.

**IDAPA 23 - IDAHO BOARD OF NURSING**  
**PO Box 83720 Boise, ID 83720-0061****23.01.01 - Rules of the Idaho Board of Nursing**

**23-0101-1201**, Increases required educational level for new licensees and provides a 'grandfathering' provision; identifies both an APRN role and population focus of practice; modifies several definitions to reflect these changes; eliminates a restriction on prescribing or dispensing medications.

**23-0101-1202**, Eliminates an unnecessary restriction in a definition; adds a definition for 'nursing jurisdiction'; eliminates an exemption applicable to taking the licensing examination; clarifies an English proficiency requirement.

**IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**  
**PO Box 83720 Boise, ID 83720-0063**

**24-0101-1201, Rules of the Board of Architectural Examiners.** Defines 'direct supervision' as it relates to unlicensed employees and 'responsible control' regarding architectural drawings to be sealed; addresses changes to the nationally administered exam; removes registration requirement for interns; clarifies the use of a retired or deceased formerly licensed architect in a company name and use of architect's seal.

**24-0401-1201, Rules of the Idaho Board of Cosmetology.** Removes the fee for permit to practice, demonstrate or teach cosmetology; changes 'student instructors' to 'student trainees'; animals allowed in a cosmetology shop must comply with the ADA definitions.

**24-0601-1201, Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants.** Updates the Certification Renewal Handbook published by the National Board for Certification in Occupational Therapy; clarifies 'close supervision'; removes requirement that 2 CEU's must be recommended by the Idaho Occupational Therapy Association to reflect changes in the law.

**24-1001-1201, Rules of the State Board of Optometry.** Updates Board procedures and processes to be consistent with current industry standards.

**24-1201-1201, Rules of the Idaho State Board of Psychologist Examiners.** Sets the number of hours allowed as credited continuing education when obtained through teleconferences, workshops, classes or training experiences.

**24-1401-1201, Rules of the State Board of Social Work Examiners.** Defines the term 'relative'; clarifies independent practice; adds section on supervision; outlines requirements for renewal of a supervisor registration; amends inactive status provision; updates the exam process; clarifies appropriate relationships between a licensee and client.

**24-1501-1201, Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists.** Updates the documents incorporated by reference; clarifies required supervised experience for licensure and continuing education requirements; adds a section specifying the documentation necessary for informed consent.

**24-1701-1201, Rules of the State Board of Acupuncture.** Clarifies active and inactive licensing process; create two (2) separate categories for continuing education; clarifies the release of the patient's records; requires disclosure of fees to the patient; limits activities allowed by unlicensed employees and non-exempt individuals; provides for supervision of trainees and technicians; clarifies limits on advertising.

**24-2301-1201, Rules of the Speech and Hearing Services Licensure Board.** Establishes an inactive status license and fee; clarifies supervised experience requirement for speech-language pathologists and the permit requirements and limitations for each licensure category.

**24-2501-1201, Rules of the Idaho Driving Businesses Licensure Board.** Defines the limitations on operating a business out of a secondary location and limits the hours of student classroom instruction per day to 6 hours.

**24-2701-1201, Rules of the Idaho State Board of Massage Therapy.** New chapter provides for the administration and establishment of procedures and processes for licensure of massage therapists.

**IDAPA 25 - OUTFITTERS AND GUIDES LICENSING BOARD**  
**1365 North Orchard St., Room 172, Boise, ID 83706**

**25-0101-1202, Rules of the Idaho Outfitters and Guides Licensing Board.** (Temp & Prop) Establishes that outfitters



licensed for big game hunting may provide wolf trapping as a hazardous excursion to clients when both are properly permitted and licensed.

**IDAPA 27 IDAHO BOARD OF PHARMACY**  
**PO Box 83720 Boise, ID 83720-0067**

**27.01.01 - Rules of the Idaho State Board of Pharmacy**

**27-0101-1201**, Updates and clarifies rule by removing extraneous language and obsolete references; clarifies renewal dates; renames registration categories.

**27-0101-1202**, Adds, strikes and clarifies definitions; reduces license and registration posting requirement; technicians-in-training must obtain and maintain employment and student pharmacists and technician registrations may be cancelled if they no longer meet the minimum requirements; clarifies student pharmacist registration and that a prescriber can designate "brand only" verbally; clarifies who initials certain labels and who is exempt from obtaining positive identification; reinstates the 7-day allowance for annual inventory; states all drugs must be stored according to rule; addresses delivery of prescriptions to a correctional facility; clarifies that a pharmacy can not open without a pharmacist-in-charge or a director present; addresses when a pharmacist may be absent from a retail pharmacy while the pharmacy is open; adds grandfathering provision to a security requirement; clarifies that pharmacy provide public notice of any change in business hours; addresses pharmacy permanent closing procedures; requires director to notify the Board of a change in employment; clarifies when a hospital's emergency room can dispense; requires an out-of-state mail service pharmacy to provide toll free telephone access to patients; reestablishes conditions for drug returns.

**27-0101-1203**, Expands the use of self-service automated dispensing and storage systems to hospital emergency rooms.

**27-0101-1204**, Addresses the practice limitations of pharmacists and members of a committee; clarifies scope of practice and restricts a pharmacist from conducting physical examinations or engaging in the unlicensed practice of medicine; addresses when and where drug product substitutions are allowed and requires that a pharmacist serve on a skilled nursing facility's quality assurance and assessment committee.

**27-0101-1205**, Expands the definition of central pharmacy to central drug outlet or pharmacist and of centralized pharmacy services; expands and establishes criteria for the statutorily authorized pharmacist registration category; converts current out-of-state and across state lines drug outlet categories into an expanded nonresident drug outlet category and establishes registration criteria; defines when a pharmacist may be registered versus licensed; requires all nonresident pharmacies and central drug outlets to register a PIC or director in Idaho; expands centralized pharmacy services practice standards; reduces the requirements of a policy and procedures manual.

**IDAPA 28 - DEPARTMENT OF COMMERCE**  
**PO Box 83720 Boise, ID 83720-0093**

**28-0205-1201, Rural Community Block Grant Program (RCBG)**. (Temp & Prop) Increases the population of eligible cities to 25,000.

**IDAPA 35 - STATE TAX COMMISSION**  
**PO Box 36, Boise, ID 83722-0410**

**35.01.01 - Income Tax Administrative Rules**

**35-0101-1201**, Redefines 'disability' to clarify the treatment of pensions received by certain retired police officers and firefighters; revises eligibility criteria that allows a deduction for installing energy efficiency upgrade measures within existing residences; clarifies what constitutes non-qualifying property for the Idaho capital gains deduction; revises the options of pass-through entities; clarifies practice of applying Idaho investment tax credit limitations first to mobile property and then to used property.

**35-0101-1202**, Adds tax brackets for calendar year 2012 and removes the information for calendar year 2007 so only 5 years of historical data is retained; provides that passive losses incurred in years when a taxpayer had no activity in Idaho are not deductible; removes the prohibition allowing the deduction of classroom supplies and other expenses not to exceed \$250 of elementary and secondary teachers; clarifies the allocation and apportionment procedures used when an S corporation and its qualified subchapter S subsidiaries are carrying on more than one unitary business; clarifies the order of limitations for the Idaho investment tax credit; corrects an oversight from the Hire One Act of 2011 by allowing companies to continue to receive the new jobs tax credit up until the start of the Hire One Act and has a sunset date of January 1, 2017; sets the amounts of the grocery credit for 2008 and provides for an increase in the amounts for subsequent years; provides that a filing date for any report, claim, tax return, statement or other document or making any such payment that falls on a Saturday, Sunday, legal holiday or a holiday recognized by the Internal Revenue Service, is considered timely if performed on the next business day.

**35-0102-1201, Sales Tax Administrative Rules.** Clarifies that a rental of tangible personal property with an owner-provided equipment operator will be treated as a fully operated rental whether the hired operator is an employee of the equipment owner or not; clarifies the exemption for the purchase and use of aircraft primarily utilized in transporting freight or passengers; clarifies whether certain fees or charges added onto the sale of tangible personal property should be included in the taxable sales price; defines 'trade down'; clarifies the taxability of tangible personal property removed from inventory held for resale; defines 'money operated dispensing equipment' and 'amusement device' to include machines operated by credit or debit cards; changes the period for reviewing the ongoing IRP use tax exemption; clarifies current policy and procedure regarding exemption certificates.

**35.01.03 - Property Tax Administrative Rules**

**\*35-0103-1202, (\*PH)** Clarifies exclusive use provisions for determining what leased property is exempt when used for educational purposes; clarifies the exemption process to add a property tax site improvement related to land exemption for land developers.

**35-0102-1203,** Provides guidance to county assessors on foreclosure sales; provides that the homeowner's exemption continues for one year after the death of the individual who has previously qualified; clarifies what information must be listed on the notice that serves as the annual exemption application; identifies specific Bureau of the Census reports that track populations of cities and counties for purposes of sales tax distribution.

**35-0103-1204,** Requires applicants for certain property tax exemptions to be notified of the decision to grant or deny the application by May 15; requires that a taxing district first budgets the maximum amount of property tax permitted including any foregone amount.

**35-0103-1205,** Provides assessors standard guidance in preparation of maps; allows maps to be produced in digital format; updates reference to a manual to the 2009 edition.

**35-0103-1207,** Updates and corrects certain reference to administrative appeals; updates documents incorporated by reference; removes requirement that taxing districts and urban renewal revenue allocation areas submit a map upon dissolution; clarifies that transient personal property located in a neighboring state for a time but does not pay taxes to the neighboring state pays taxes in Idaho; expands the definition of 'pipeline' to include gas gathering lines and brings gathering lines under PUC regulation and makes them subject to appraisal by the state for apportionment purposes; adds the site improvement exemption; deletes unused land categories 8, 44, 60, 61 and 62; provides county assessors guidance on recreational vehicle exemption; changes due date for the exemption application for operating properties and directs the filing of the application for locally assessed property to the county commissioners; explains to assessors that the previous year's exemption will be deducted from the current year's new construction roll.

**35-0109-1201, Table and Kitchen Wine Tax Administrative Rules.** Amends current policy and procedure regarding the types of security acceptable in place of a bond; deletes outdated language requiring reports of out-of-state wholesalers and distributors.

**35-0110-1201, Idaho Cigarette and Tobacco Products Tax Administrative Rules.** Amends current policy and procedure regarding the types of security acceptable in place of a bond.

**35-0112-1201, Idaho Beer Tax Administrative Rules.** Amends current policy and procedure regarding the types of security acceptable in place of a bond; deletes outdated language requiring reports of out-of-state wholesalers and distributors.

**35-0201-1201, Administration and Enforcement Rules.** Adds the interest rate for calendar year 2013 and the Revenue Ruling where the federal rate for the calculation can be found; allows for the exchange of information to Treasurers Office and Idaho Transportation Department.

**IDAPA 36 - IDAHO BOARD OF TAX APPEALS**

**PO Box 83720 Boise, ID 83720-0088**

**36-0101-1201, Idaho Board of Tax Appeals Rules.** Updates Board's procedural rules and deletes a public witness rule.

**IDAPA 37 - DEPARTMENT OF WATER RESOURCES**

**PO Box 83720 Boise, ID 83720-0098**

**\*37-0303-1201, Minimum Standards for the Construction and Use of Injection Wells.** (\*PH) Changes to Class V injection wells comply with state law and federal code; adds and updates definitions; removes exemptions for certain

shallow injections wells; reduces permitting and advertising requirements for low-flow domestic heat pump return injection wells; adds rules specific to Class II injections wells associated with oil and gas production.

**IDAPA 38 - DEPARTMENT OF ADMINISTRATION**

**PO Box 83720 Boise, ID 83720-0013**

**38-0406-1202, Rules Governing Use of the Exterior of State Property in the Capitol Mall and Other State Facilities.** (Temp & Prop) Establishes the allowed uses and sets parameters of use to ensure the safety of persons and property when the exteriors of state properties are used for purposes other than the conduct of public business.

**38-0407-1202, Rules Governing Use of the Interior of State Property in the Capitol Mall and Other State Facilities.** (Temp & Prop) Establishes the allowed uses and sets parameters of use to ensure the safety of persons and property when the interiors of state properties are used for purposes other than the conduct of public business.

**38-0408-1202, Rules Governing Use of Idaho State Capitol Exterior.** (Temp & Prop) Establishes the allowed uses and sets parameters of use to ensure the safety of persons and property when the exterior of the State Capitol is used for purposes other than the conduct of public business.

**IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT**

**PO Box 7129, Boise ID 83707-1129**

**39-0261-1201, Rules Governing License Plates for Governmental Agencies and Taxing Districts.** Makes the application process and registration costs consistent for all exempt plates for agencies eligible for exempt vehicle registration; adds provisions specific to the undercover plate program.

**39-0271-1201, Rules Governing Driver's License Violation Point System.** Authorizes and directs the department to establish a violation point count system for various moving traffic violations and infractions and implements the system and provides information and guidance to the public and those drivers impacted by violation points.

**39-0342-1201, Rules Governing Highway Right-of-Way Encroachments on State Rights-of-Way.** (Temp & Prop) Clarifies and simplifies the permit appeal process; renames and redefines the highway types and access types; places more authority with the District Engineers; and restructures the fee schedule based on proposed land use.

**IDAPA 47 - DIVISION OF VOCATIONAL REHABILITATION**

**PO Box 83720, Boise, ID 83720-0027**

**47-0101-1202, Rules of the Idaho Division of Vocational Rehabilitation.** Updates the incorporation by reference of the Field Services Policy Manual as approved in June 2012; updates the policies and procedures regarding customer appeals, mediation process, and order of selections process.

**IDAPA 52 - IDAHO STATE LOTTERY COMMISSION**

**PO Box 6537, Boise, ID 83707-6537**

**52-0102-1201, Gaming Rules of the Idaho State Lottery Commission.** Aligns rule to Idaho Code by increasing the maximum allowable expenditure percentages for charitable bingo and raffle licensees.

**52.01.03 - Rules Governing Operations of the Idaho State Lottery**

**52-0103-1201,** Allows Lottery to charge a minimal cost- recovery fee when customers purchase tickets via a PAT ticket vending machines using a PIN-protected debit card rather than cash.

**52-0103-1202,** Eliminates requirement that the equipment used for on-line game drawings be inspected before and after drawings to align with current policy; clarifies procedure for processing joint claims on winning lottery tickets to avoid disputes over prize winnings payouts.

**IDAPA 54 - OFFICE OF THE STATE TREASURER**

**PO Box 83720, Boise, ID 83720-9101**

**54-0301-1201, Idaho Unclaimed Property Administrative Rules.** Provides clarifications and a better understanding of existing rules and procedures.

**NOTICE OF PROCLAMATION OF RULEMAKING**

**IDAPA 06 - Idaho Board of Correction**

*06-0101-1202, Rules of the Board of Correction (changes effective 11-02-2012)*

**NOTICE OF ADOPTION OF TEMPORARY RULE**

**IDAPA 27 - Idaho State Board of Pharmacy**

*27-0101-1206, Rules of the Idaho State Board of Pharmacy*

**NOTICES OF NEGOTIATED RULEMAKING**

**IDAPA 25 - Outfitters and Guides Licensing Board**

*25-0101-1201, Rules of the Idaho Outfitters and Guides Licensing Board*

**IDAPA 57 - Sexual Offender Management Board**

*57-0101-1201, Rules Governing the Sexual Offender Management Board*

Please refer to the Idaho Administrative Bulletin, **October 3, 2012, Volume 12-10**, for the notices and text of all rulemakings, public hearings schedules, information on negotiated rulemakings, executive orders of the Governor, and agency contact information.

*Issues of the Idaho Administrative Bulletin can be viewed at [adminrules.idaho.gov](http://adminrules.idaho.gov).*

Office of the Administrative Rules Coordinator, Dept. of Administration, PO Box 83720, Boise, ID 83720-0306  
Phone: 208-332-1820; Fax: 332-1896; Email: [rulescoordinator@adm.idaho.gov](mailto:rulescoordinator@adm.idaho.gov)

# **CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES**

*Idaho Department of Administration  
Office of the Administrative Rules Coordinator*

*July 1, 1993 -- Present*

## **CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES**

*This online index provides a history of all agency rulemakings from 1993 to the present.  
It tracks all rulemaking activities on each chapter of rules and includes negotiated,  
temporary, proposed, pending and final rules, public hearing notices,  
vacated rulemaking notices, and executive orders of the Governor.*

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# **ABRIDGED RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES**

*Idaho Department of Administration  
Office of the Administrative Rules Coordinator*

*March 29, 2012 -- October 3, 2012*

*(eff. \*PLR) - Final Rule Adoption Date Pending Legislative Review And Approval*

*(eff. date)L - Denotes Adoption by Legislative Action*

*(eff. date)T - Temporary Rule Effective Date*

*SCR # - denotes the number of a Senate Concurrent Resolution (Legislative Action)*

*HCR # - denotes the number of a House Concurrent Resolution (Legislative Action)*

*(This Abridged Index includes rules promulgated before March 29, 2012 that have not been  
adopted as final rules and all rulemakings being promulgated after March 29, 2012 - Sine Die.)*

***IDAPA 01 -- IDAHO BOARD OF ACCOUNTANCY***

***01.01.01, Idaho Accountancy Rules***

**01-0101-1201** Proposed Rulemaking, Bulletin Vol. 12-10

***IDAPA 02 -- DEPARTMENT OF AGRICULTURE***

***02.02.14, Rules for Weights and Measures***

**02-0214-1201** Proposed Rulemaking, Bulletin Vol. 12-7

**02-0214-1201** Adoption of Pending Rule, Bulletin Vol. 12-10 (eff. \*PLR 2013)

***02.03.03, Rules Governing Pesticide and Chemigation Use and Application***

**02-0303-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-7

**02-0303-1201** Proposed Rulemaking, Bulletin Vol. 12-10

***02.04.08, Rules Governing Grade A Milk and Milk Products***

**02-0408-1201** Temporary and Proposed Rulemaking, Bulletin Vol. 12-5 (eff. 6-1-12)T

***02.04.14, Rules Governing Dairy Waste***

**02-0414-0902** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 09-10

***02.04.19, Rules Governing Domestic Cervidae***

**02-0419-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-8

**02-0419-1201** Proposed Rulemaking, Bulletin Vol. 12-10

***02.04.21, Rules Governing the Importation of Animals***

**02-0421-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-8

**02-0421-1201** Proposed Rulemaking, Bulletin Vol. 12-10

***02.06.02, Rules Pertaining to the Idaho Commercial Feed Law***

**02-0602-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-6

**02-0602-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-7 - Second Notice

**02-0602-1201** Temporary and Proposed Rulemaking (Fee Rule), Bulletin Vol. 12-9 (eff. 9-5-12)T

***02.06.12, Rules Pertaining to the Idaho Fertilizer Law***

**02-0612-1201** Proposed Rulemaking, Bulletin Vol. 12-7

**02-0612-1201** Adoption of Pending Rule, Bulletin Vol. 12-10 (eff. \*PLR 2013)

***02.06.13, Rules Relating to Rapeseed Production and Establishment of Rapeseed Districts in the State of Idaho***

**02-0613-0801** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 08-9

**02-0613-0801** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 08-10

**02-0613-0801** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 08-11

**02-0613-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-7

**02-0613-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Second Notice, Bulletin Vol. 12-8

**02-0613-1201** Proposed Rulemaking, Bulletin Vol. 12-10

***02.06.14, Rules Pertaining to Annual Bluegrass (*Poa annua*)***

**02-0614-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-7

**02-0614-1201** Proposed Rulemaking, Bulletin Vol. 12-10

***02.06.16, Rules Governing Honey Standards***

**02-0616-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-7

**02-0616-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Second Notice, Bulletin Vol. 12-8

**02-0616-1201** Proposed Rulemaking (New Chapter), Bulletin Vol. 12-10

**02.06.31, Noxious Weed Free Forage and Straw Certification Rules**

**02-0631-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-7

**02-0631-1201** Proposed Rulemaking, Bulletin Vol. 12-10

**02.06.33, Organic Food Products Rules**

**02-0633-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-7

**02-0633-1201** Proposed Rulemaking (Fee Rule), Bulletin Vol. 12-10

**02.06.35, Rules Concerning Rough Bluegrass (*Poa trivialis*)**

**02-0635-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-7

**02-0635-1201** Proposed Rulemaking, Bulletin Vol. 12-10

**02.06.41, Rules Pertaining to the Idaho Soil and Plant Amendment Act of 2001**

**02-0641-1201** Proposed Rulemaking, Bulletin Vol. 12-7

**02-0641-1201** Adoption of Pending Rule, Bulletin Vol. 12-10 (eff. \*PLR 2013)

**IDAPA 03 -- STATE ATHLETIC COMMISSION**

**03.01.01, Rules of the State Athletic Commission**

**03-0101-1201** Proposed Rulemaking (Fee Rule), Bulletin Vol. 12-10

**IDAPA 06 -- STATE BOARD OF CORRECTION**

**06.01.01, Rules of the Board of Correction**

**06-0101-1201** OAR Omnibus Rulemaking Notice - Approval of Final Rule, Bulletin Vol. 12-5 (eff. 1-11-12)

**06-0101-1202** Notice of Proclamation of Rulemaking, Bulletin Vol. 12-10 (eff. 11-2-12)

**IDAPA 07 -- DIVISION OF BUILDING SAFETY**

**07.01.06, Rules Governing the Use of National Electrical Code**

**07-0106-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-4

**07.02.03, Rules Governing Permit Fee Schedule**

**07-0203-1201** Proposed Rulemaking, Bulletin Vol. 12-10

**07.02.04, Rules Governing Plumbing Safety Inspections**

**07-0204-0201** Proposed Rulemaking, Bulletin Vol. 12-10

**07.02.06, Rules Concerning Uniform Plumbing Code**

**07-0206-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-5

**07-0206-1201** Proposed Rulemaking, Bulletin Vol. 12-10

**07.03.01, Rules of Building Safety**

**07-0301-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-3

**07-0301-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-6 (Second Notice)

**07-0301-1201** Proposed Rulemaking, Bulletin Vol. 12-10

**07-0301-1202** Proposed Rulemaking, Bulletin Vol. 12-10

**07.03.12, Rules Governing Manufactured or Mobile Home Installations**

**07-0312-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-4

**07-0312-1201** Proposed Rulemaking (Fee Rule), Bulletin Vol. 12-10

***07.05.01, Rules of the Public Works Contractors License Board***

**07-0501-1201** Temporary and Proposed Rulemaking (Fee Rule), Bulletin Vol. 12-9 (eff. 7-1-12)T

**07-0501-1202** Proposed Rulemaking, Bulletin Vol. 12-9

***07.07.01, Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems***

**07-0701-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-5

**07-0701-1201** Temporary and Proposed Rulemaking, Bulletin Vol. 12-10 (eff. 9-1-12)T

**07-0701-1202** Proposed Rulemaking, Bulletin Vol. 12-10

***IDAPA 08 -- IDAHO STATE BOARD OF EDUCATION  
AND STATE DEPARTMENT OF EDUCATION***

***08.01.10, Idaho College Work Study Program***

**08-0110-1201** Proposed Rulemaking, Bulletin Vol. 12-10

***08.01.11, Registration of Postsecondary Educational Institutions and Proprietary Schools***

**08-0111-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-7

**08-0111-1201** Proposed Rulemaking, Bulletin Vol. 12-10

***08.01.14, Idaho Rural Physician Incentive Program***

**08-0114-1201** Temporary and Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 12-10 (eff. 8-16-12)T

***08.02.01, Rules Governing Administration***

**08-0201-1201** Temporary and Proposed Rulemaking, Bulletin Vol. 12-8 (eff. 6-21-12)T

***08.02.02, Rules Governing Uniformity***

**08-0202-1201** Proposed Rulemaking, Bulletin Vol. 12-7

**08-0202-1202** Proposed Rulemaking, Bulletin Vol. 12-8

**08-0202-1203** Proposed Rulemaking, Bulletin Vol. 12-10

**08-0202-1204** Proposed Rulemaking, Bulletin Vol. 12-10

**08-0202-1205** Proposed Rulemaking, Bulletin Vol. 12-10

**08-0202-1206** Proposed Rulemaking, Bulletin Vol. 12-10

***08.02.03, Rules Governing Thoroughness***

**08-0203-1201** Temporary and Proposed Rulemaking, Bulletin Vol. 12-6 (eff. 4-19-12)T

**08-0203-1202** Proposed Rulemaking, Bulletin Vol. 12-8

**08-0203-1203** Temporary and Proposed Rulemaking, Bulletin Vol. 12-8 (eff. 6-21-12)T

**08-0203-1204** Temporary and Proposed Rulemaking (Fee Rule), Bulletin Vol. 12-8 (eff. 6-21-12)T

**08-0203-1205** Proposed Rulemaking, Bulletin Vol. 12-10

**08-0203-1206** Proposed Rulemaking, Bulletin Vol. 12-10

***08.02.04, Rules Governing Public Charter Schools***

**08-0204-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-7

**08-0204-1201** Temporary and Proposed Rulemaking, Bulletin Vol. 12-10 (eff. 8-16-12)T

***08.03.01, Rules of the Public Charter School Commission***

**08-0301-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-7

**08-0301-1201** Temporary and Proposed Rulemaking, Bulletin Vol. 12-10 (eff. 8-16-12)T

***IDAPA 09 -- IDAHO DEPARTMENT OF LABOR***



***09.01.04, Unemployment Insurance Benefit Fraud and Overpayment Rules***

- 09-0104-1201** Proposed Rulemaking, Bulletin Vol. 12-8  
**09-0104-1201** Adoption of Pending Rule, Bulletin Vol. 12-10 (eff. \*PLR 2013)

***09.01.30, Unemployment Insurance Benefits Administration Rules***

- 09-0130-1201** Proposed Rulemaking, Bulletin Vol. 12-8  
**09-0130-1201** Adoption of Pending Rule, Bulletin Vol. 12-10 (eff. \*PLR 2013)

***09.01.35, Unemployment Insurance Tax Administration Rules***

- 09-0135-1201** Proposed Rulemaking, Bulletin Vol. 12-8  
**09-0135-1201** Adoption of Pending Rule, Bulletin Vol. 12-10 (eff. \*PLR 2013)

***IDAPA 10 -- IDAHO BOARD OF LICENSURE OF PROFESSIONAL ENGINEERS  
AND PROFESSIONAL LAND SURVEYORS******10.01.01, Rules of Procedure***

- 10-0101-1201** Temporary and Proposed Rulemaking, Bulletin Vol. 12-5 (eff. 7-1-12)T  
**10-0101-1201** Adoption of Pending Rule, Bulletin Vol. 12-7 (eff. \*PLR 2013)

***10.01.04, Rules of Continuing Professional Development***

- 10-0104-1201** Temporary and Proposed Rulemaking, Bulletin Vol. 12-5 (eff. 7-1-12)T  
**10-0104-1201** Adoption of Pending Rule, Bulletin Vol. 12-7 (eff. \*PLR 2013)

***IDAPA 11 -- IDAHO STATE POLICE******11.02.01, Rules of the Idaho State Brand Board***

- 11-0201-1201** Temporary Rulemaking (Fee Rule), Bulletin Vol. 12-3 (eff. 2-1-12)T

***11.02.02, Idaho Livestock Dealer Licensing***

- 11-0202-1201** Temporary Rulemaking (Fee Rule), Bulletin Vol. 12-3 (eff. 2-1-12)T

***11.03.01, Rules Governing Alcohol Testing, Idaho State Forensic Laboratory***

- 11-0301-1201** Temporary Rulemaking, Bulletin Vol. 12-1 (eff. 11-1-11)T  
**11-0301-1201** OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 129, Bulletin Vol. 12-5

***11.05.01, Rules Governing Alcohol Beverage Control***

- 11-0501-1101** Temporary Rulemaking, Bulletin Vol. 11-7 (eff. 7-6-11)T  
**11-0501-1201** OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 129, Bulletin Vol. 12-5

***11.11.01, Rules of the Idaho Peace Officer Standards and Training Council***

- 11-1101-1201** Temporary and Proposed Rulemaking, Bulletin Vol. 12-8 (eff. 7-1-12)T  
**11-1101-1201** Adoption of Pending Rule, Bulletin Vol. 12-10 (eff. \*PLR 2013)  
**11-1101-1202** Proposed Rulemaking, Bulletin Vol. 12-10

***11.11.02, Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Detention Officers***

- 11-1102-1201** Proposed Rulemaking, Bulletin Vol. 12-10

***11.11.03, Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Probation Officers***

- 11-1103-1201** Proposed Rulemaking, Bulletin Vol. 12-10

***11.11.04, Rules of the Idaho Peace Officer Standards and Training Council for Correctional Officers  
and Adult Probation and Parole Officers***

[11-1104-1201](#) Proposed Rulemaking, Bulletin Vol. 12-10

***11.11.06, Rules of the Idaho Peace Officer Standards and Training Council for Misdemeanor Probation Officers***

[11-1106-1201](#) Proposed Rulemaking, Bulletin Vol. 12-10

***11.13.01, The Motor Carrier Rules***

[11-1301-1201](#) Temporary Rulemaking, Bulletin Vol. 12-5 (eff. 3-1-12)T

***IDAPA 12 -- DEPARTMENT OF FINANCE***

***12.01.10, Rules Pursuant to the Idaho Residential Mortgage Practices Act***

[12-0110-1201](#) Proposed Rulemaking, Bulletin Vol. 12-10

***IDAPA 13 -- IDAHO FISH AND GAME COMMISSION***

***13.01.02, Rules Governing Public Safety***

[13-0102-1201](#) Proposed Rulemaking, Bulletin Vol. 12-10

***13.01.04, Rules Governing Licensing***

[13-0104-1201](#) Temporary and Proposed Rulemaking, Bulletin Vol. 12-10 (eff. 8-27-12)T

[13-0104-1202](#) Proposed Rulemaking, Bulletin Vol. 12-10

***13.01.07, Rules Governing the Taking of Upland Game Animals***

[13-0107-1201](#) Proposed Rulemaking, Bulletin Vol. 12-10

***13.01.08, Rules Governing the Taking of Big Game Animals in the State of Idaho***

[13-0108-1201](#) Temporary and Proposed Rulemaking, Bulletin Vol. 12-10 (eff. 7-16-12)T

[13-0108-1202](#) Temporary and Proposed Rulemaking, Bulletin Vol. 12-10 (eff. 7-16-12)T

[13-0108-1203](#) Temporary and Proposed Rulemaking, Bulletin Vol. 12-10 (eff. 7-16-12)T

[13-0108-1204](#) Proposed Rulemaking, Bulletin Vol. 12-10

[13-0108-1205](#) Proposed Rulemaking, Bulletin Vol. 12-10

***13.01.09, Rules Governing the Taking of Game Birds in the State of Idaho***

[13-0109-1201](#) Temporary and Proposed Rulemaking, Bulletin Vol. 12-10 (eff. 7-16-12)T

[13-0109-1202](#) Temporary and Proposed Rulemaking, Bulletin Vol. 12-10 (eff. 7-16-12)T

[13-0109-1203](#) Proposed Rulemaking, Bulletin Vol. 12-10

[13-0109-1204](#) Proposed Rulemaking, Bulletin Vol. 12-10

***13.01.16, The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals***

[13-0116-1201](#) Temporary and Proposed Rulemaking, Bulletin Vol. 12-10 (eff. 7-16-12)T

***13.01.17, Rules Governing the Use of Bait for Taking Big Game Animals***

[13-0117-1201](#) Temporary and Proposed Rulemaking, Bulletin Vol. 12-10 (eff. 7-16-12)T

***IDAPA 15 -- OFFICE OF THE GOVERNOR***

***Executive Orders of the Governor***

Executive Order No. [2012-01](#) Bulletin Vol. 12-3

Executive Order No. [2012-03](#) Bulletin Vol. 12-7

Executive Order No. [2012-02](#) Bulletin Vol. 12-5

Executive Order No. [2012-04](#) Bulletin Vol. 12-9

***Idaho Emergency Communications Commission - Idaho Military Division***

**15.06.03, Public Safety Communications Rules**

**15-0603-1201** Proposed Rulemaking (New Chapter - Fee Rule), Bulletin Vol. 12-10

**IDAPA 16 -- DEPARTMENT OF HEALTH AND WELFARE****16.02.02, Rules of the Idaho Emergency Medical Services (EMS) Physician Commission**

**16-0202-1201** Proposed Rulemaking, Bulletin Vol. 12-7

**16.03.04, Rules Governing the Food Stamp Program in Idaho**

**16-0304-1201** Temporary and Proposed Rulemaking, Bulletin Vol. 12-10 (eff. 10-1-12)T

**16-0304-1202** Temporary and Proposed Rulemaking, Bulletin Vol. 12-10 (eff. 9-1-12)T

**16.03.05, Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD)**

**16-0305-1201** Proposed Rulemaking, Bulletin Vol. 12-10

**16-0305-1202** Proposed Rulemaking, Bulletin Vol. 12-10

**16.03.09, Medicaid Basic Plan Benefits**

**16-0309-1101** Temporary and Proposed Rulemaking, Bulletin Vol. 11-12 (eff. 9-28-11)T

**16-0309-1101** OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 129, Bulletin Vol. 12-5

**16-0309-1202** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-3

**16-0309-1101** Adoption of Pending Rule, Bulletin Vol. 12-6 (eff. \*PLR 2013)

**16-0309-1204** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-6

**16-0309-1203** Temporary and Proposed Rulemaking, Bulletin Vol. 12-7 (eff. 9-28-11)T - (3-29-12)T

**16-0309-1202** Proposed Rulemaking, Bulletin Vol. 12-9

**16-0309-1204** Proposed Rulemaking, Bulletin Vol. 12-9

**16-0309-1205** Proposed Rulemaking, Bulletin Vol. 12-10

**16-0309-1206** Proposed Rulemaking, Bulletin Vol. 12-10

**16.03.10, Medicaid Enhanced Plan Benefits**

**16-0310-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-5

**16-0310-1202** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-5

**16-0310-1203** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-6

**16-0310-1204** Temporary and Proposed Rulemaking, Bulletin Vol. 12-7 (eff. 7-1-12)T

**16-0310-1201** Proposed Rulemaking, Bulletin Vol. 12-10

**16-0310-1202** Temporary and Proposed Rulemaking, Bulletin Vol. 12-10 (eff. 10-1-12)T

**16-0310-1203** Proposed Rulemaking, Bulletin Vol. 12-10

**16-0310-1205** Temporary and Proposed Rulemaking, Bulletin Vol. 12-10 (eff. 10-1-12)T

**16.03.25, Idaho Medicaid Electronic Health Record (EHR) Incentive Program**

**16-0325-1201** Temporary and Proposed Rulemaking (New Chapter), Bulletin Vol. 12-7 (eff. 7-1-12)T

**16.04.02, Idaho Telecommunication Service Assistance Program Rules**

**16-0402-1201** Temporary and Proposed Rulemaking, Bulletin Vol. 12-10 (eff. 6-1-12)T

**16.04.10, Rules Governing the Community Services Block Grant Program**

**16-0410-1201** Temporary and Proposed Rulemaking, Bulletin Vol. 12-8 (eff. 10-1-11)T

**16.05.01, Use and Disclosure of Department Records**

**16-0501-1201** Proposed Rulemaking, Bulletin Vol. 12-9

**16.05.06, Criminal History and Background Checks**

**16-0506-1201** Temporary and Proposed Rulemaking (Fee Rule), Bulletin Vol. 12-7 (eff. 7-1-12)T

***16.06.01, Child and Family Services***

- 16-0601-1201** Temporary and Proposed Rulemaking, Bulletin Vol. 12-8 (eff. 7-1-12)T  
**16-0601-1202** Proposed Rulemaking, Bulletin Vol. 12-9

***16.06.08, Rules and Minimum Standards for DUI Evaluators***

- 16-0608-1201** Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 12-9

***16.06.12, Rules Governing the Idaho Child Care Program (ICCP)***

- 16-0612-1201** Temporary and Proposed Rulemaking, Bulletin Vol. 12-1 (eff. 12-1-11)T  
**16-0612-1201** OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 129, Bulletin Vol. 12-5  
**16-0612-1201** Adoption of Pending Rule, Bulletin Vol. 12-6 (eff. \*PLR 2013)

***16.07.01, Behavioral Health Sliding Fee Schedules***

- 16-0701-1201** Proposed Rulemaking, Bulletin Vol. 12-9

***16.07.17, Alcohol and Substance Use Disorders Services***

- 16-0717-1201** Proposed Rulemaking, Bulletin Vol. 12-9

***16.07.20, Alcohol and Substance Use Disorders Treatment and Recovery Support Services Facilities and Programs***

- 16-0720-1201** Proposed Rulemaking, Bulletin Vol. 12-9

***IDAPA 17 -- INDUSTRIAL COMMISSION******17.02.04, Administrative Rules of the Industrial Commission Under the Worker's Compensation Law - Benefits***

- 17-0204-1201** Proposed Rulemaking, Bulletin Vol. 12-8

***17.02.09, Medical Fees***

- 17-0209-1201** Proposed Rulemaking, Bulletin Vol. 12-10

***IDAPA 18 -- DEPARTMENT OF INSURANCE******18.01.09, Consumer Protection in Annuity Transactions***

- 18-0109-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-7  
**18-0109-1201** Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 12-9  
**18-0109-1202\*** Proposed Rulemaking (Chapter Rewrite), Bulletin Vol. 12-9

(\*Rulemaking changes chapter name from: "Consumer Protection in Annuity Transactions"  
to: "Suitability in Annuity Transactions")

***18.01.19, Insurance Rates and Credit Rating***

- 18-0119-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-7  
**18-0119-1201** Proposed Rulemaking, Bulletin Vol. 12-9

***18.01.44, Schedule of Fees, Licenses, and Miscellaneous Charges***

- 18-0144-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-7  
**18-0144-1201** Proposed Rulemaking (Fee Rule), Bulletin Vol. 12-9

***18.01.56, Rebates and Illegal Inducements to Obtaining Title Insurance Business Rules***

- 18-0156-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-7  
**18-0156-1201** Proposed Rulemaking, Bulletin Vol. 12-9

***IDAPA 20 -- DEPARTMENT OF LANDS***

***20.02.01, Rules Pertaining to the Idaho Forest Practices Act***

- 20-0201-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-6  
**20-0201-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-7 - Second Notice  
**20-0201-1201** Proposed Rulemaking, Bulletin Vol. 12-10

***20.03.14, Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation,  
and Communication Site Leases***

- 20-0314-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-6  
**20-0314-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-7 - Second Notice  
**20-0314-1201** Proposed Rulemaking, Bulletin Vol. 12-10

***20.03.15, The Issuance of Geothermal Resource Leases***

- 20-0315-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-7  
**20-0315-1201** Proposed Rulemaking, Bulletin Vol. 12-10

***IDAPA 22 -- BOARD OF MEDICINE******22.01.01, Rules of the Board of Medicine for Licensure to Practice Medicine and Surgery  
and Osteopathic Medicine and Surgery in Idaho***

- 22-0101-1201** Proposed Rulemaking, Bulletin Vol. 12-10

***22.01.02, Rules of the Board of Medicine for the Registration of Externs, Interns, and Residents***

- 22-0102-1201** Proposed Rulemaking (Fee Rule), Bulletin Vol. 12-10

***22.01.03, Rules for the Licensure of Physician Assistants***

- 22-0103-1201** Proposed Rulemaking (Fee Rule), Bulletin Vol. 12-10

***22.01.11, Rules for the Licensure of Respiratory Therapists and Permitting of Polysomnographers in Idaho***

- 22-0111-1201** Proposed Rulemaking, Bulletin Vol. 12-10

***22.01.12, Rules Relating to Health Care Workers***

- 22-0112-1201** Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 12-10

***22.01.13, Rules for the Licensure of Dietitians***

- 22-0113-1201** Proposed Rulemaking (Fee Rule), Bulletin Vol. 12-10

***22.01.14, Rules Relating to Complaint Investigation***

- 22-0114-1201** Proposed Rulemaking, Bulletin Vol. 12-10

***IDAPA 23 -- BOARD OF NURSING******23.01.01, Rules of the Idaho Board of Nursing***

- 23-0101-1201** Proposed Rulemaking, Bulletin Vol. 12-10  
**23-0101-1202** Proposed Rulemaking, Bulletin Vol. 12-10

***IDAPA 24 -- BUREAU OF OCCUPATIONAL LICENSES******24.01.01, Rules of the Board of Architectural Examiners***

- 24-0101-1201** Proposed Rulemaking, Bulletin Vol. 12-10

**24.04.01, Rules of the Idaho Board of Cosmetology****24-0401-1201** Proposed Rulemaking (Fee Rule), Bulletin Vol. 12-10**24.06.01, Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants****24-0601-1201** Proposed Rulemaking, Bulletin Vol. 12-10**24.10.01, Rules of the State Board of Optometry****24-1001-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-2**24-1001-1201** Proposed Rulemaking, Bulletin Vol. 12-10**24.12.01, Rules of the State Board of Psychologist Examiners****24-1201-1201** Proposed Rulemaking, Bulletin Vol. 12-10**24.14.01, Rules of the State Board of Social Work Examiners****24-1401-1201** Proposed Rulemaking, Bulletin Vol. 12-10**24.15.01, Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists****24-1501-1201** Proposed Rulemaking, Bulletin Vol. 12-10**24.17.01, Rules of the State Board of Acupuncture****24-1701-1201** Proposed Rulemaking, Bulletin Vol. 12-10**24.18.01, Rules of the Real Estate Appraiser Board****24-1801-1201** Temporary and Proposed Rulemaking, Bulletin Vol. 12-5 (eff. 3-23-12)T**24.23.01, Rules of the Speech and Hearing Services Licensure Board****24-2301-1201** Proposed Rulemaking, Bulletin Vol. 12-10**24.25.01, Rules of the Idaho Driving Businesses Licensure Board****24-2501-1201** Proposed Rulemaking, Bulletin Vol. 12-10**24.27.01, Rules of The Idaho State Board of Massage Therapy****24-2701-1201** Proposed Rulemaking (New Chapter), Bulletin Vol. 12-10***IDAPA 25 -- OUTFITTERS AND GUIDES LICENSING BOARD*****25.01.01, Rules of the Outfitters and Guides Licensure Board****25-0101-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-10**25-0101-1202** Temporary and Proposed Rulemaking, Bulletin Vol. 12-10 (eff. 9-5-12)T***IDAPA 26 -- DEPARTMENT OF PARKS AND RECREATION*****26.01.20, Rules Governing the Administration of Park and Recreation Areas and Facilities****26-0120-1201** Temporary and Proposed Rulemaking, Bulletin Vol. 12-8 (eff. 5-9-12)T**26-0120-1202** Temporary and Proposed Rulemaking (Fee Rule), Bulletin Vol. 12-9 (eff. 9-1-12)T***IDAPA 27 -- BOARD OF PHARMACY*****27.01.01, Rules of the Idaho State Board of Pharmacy****27-0101-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-5**27-0101-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Second Notice, Bulletin Vol. 12-8**27-0101-1201** Proposed Rulemaking, Bulletin Vol. 12-10

- 27-0101-1202** Proposed Rulemaking, Bulletin Vol. 12-10
- 27-0101-1203** Proposed Rulemaking, Bulletin Vol. 12-10
- 27-0101-1204** Proposed Rulemaking, Bulletin Vol. 12-10
- 27-0101-1205** Proposed Rulemaking (Fee Rule), Bulletin Vol. 12-10
- 27-0101-1206** Temporary Rulemaking, Bulletin Vol. 12-10 (eff. 8-22-12)T

### ***IDAPA 28 -- DEPARTMENT OF COMMERCE***

#### ***28.02.05, Rural Community Block Grant Program***

- 28-0205-1201** Temporary and Proposed Rulemaking, Bulletin Vol. 12-10 (eff. 6-1-12)T

#### ***28.02.06, Idaho Small Business Federal Funding Assistance Act Rules***

- 28-0206-1201** Temporary and Proposed Rulemaking (New Chapter), Bulletin Vol. 12-6 (eff. 6-1-12)T
- 28-0206-1201** Adoption of Pending Rule, Bulletin Vol. 12-10 (eff. \*PLR 2013)

### ***IDAPA 31 -- PUBLIC UTILITIES COMMISSION***

#### ***31.41.01, Customer Relations Rules for Telephone Corporations Providing Services in Idaho Subject to Customer Service Regulation by the Idaho Public Utilities Commission***

- 31-4101-1201** Temporary and Proposed Rulemaking, Bulletin Vol. 12-9 (eff. 7-3-12)T

### ***IDAPA 35 -- STATE TAX COMMISSION***

#### ***35.01.01, Income Tax Administrative Rules***

- 35-0101-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-6
- 35-0101-1201** Proposed Rulemaking, Bulletin Vol. 12-10
- 35-0101-1202** Proposed Rulemaking, Bulletin Vol. 12-10

#### ***35.01.02, Idaho Sales and Use Tax Administrative Rules***

- 35-0102-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-6
- 35-0102-1201** Proposed Rulemaking, Bulletin Vol. 12-10

#### ***35.01.03, Property Tax Administrative Rules***

- 35-0103-1201** Temporary Rulemaking, Bulletin Vol. 12-5 (eff. 1-1-12)T
- 35-0103-1202** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-5
- 35-0103-1203** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-6
- 35-0103-1204** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-7
- 35-0103-1205** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-8
- 35-0103-1206** Temporary Rulemaking, Bulletin Vol. 12-9 (eff. 1-1-12)T
- 35-0103-1202** Proposed Rulemaking, Bulletin Vol. 12-10
- 35-0103-1203** Proposed Rulemaking, Bulletin Vol. 12-10
- 35-0103-1204** Proposed Rulemaking, Bulletin Vol. 12-10
- 35-0103-1205** Proposed Rulemaking, Bulletin Vol. 12-10
- 35-0103-1207** Proposed Rulemaking, Bulletin Vol. 12-10

#### ***35.01.09, Idaho County Option Kitchen and Table Wine Tax Administrative Rules***

- 35-0109-1201** Proposed Rulemaking, Bulletin Vol. 12-10

#### ***35.01.10, Idaho Cigarette and Tobacco Products Tax Administrative Rules***

- 35-0110-1201** Proposed Rulemaking, Bulletin Vol. 12-10

#### ***35.01.12, Idaho Beer Tax Administrative Rules***

**35-0112-1201** Proposed Rulemaking, Bulletin Vol. 12-10

**35.02.01, Tax Commission Administration and Enforcement Rules**

**35-0201-1201** Proposed Rulemaking, Bulletin Vol. 12-10

***IDAPA 36 -- IDAHO BOARD OF TAX APPEALS***

**36.01.01, Idaho Board of Tax Appeals Rules**

**31-0101-1201** Proposed Rulemaking, Bulletin Vol. 12-10

***IDAPA 37 -- DEPARTMENT OF WATER RESOURCES***

**37.03.03, Rules and Minimum Standards for the Construction and Use of Injection Wells**

**37-0303-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-4

**37-0303-1201** Proposed Rulemaking, Bulletin Vol. 12-10

**37.03.11, Rules for Conjunctive Management of Surface and Ground Water Resources**

**37-0311-1101** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 11-2

**37.03.13, The Water Management Rules**

**37-0313-9701** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 97-12

**37-0313-9701** Proposed Rulemaking, Bulletin Vol. 98-10

**37-0313-9701** Notice of Intent to Promulgate Rules - Negotiated Rulemaking (2nd Notice), Bulletin Vol. 00-11

**37.03.14, Transfers**

**37-0314-9801** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 98-5

**37.03.15, Water Management Rules - Eastern Snake Plain Aquifer**

**37-0315-0001** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 00-12

***IDAPA 38 -- IDAHO DEPARTMENT OF ADMINISTRATION***

**38.04.06, Rules Governing Use of the Exterior of State Property in the Capitol Mall and Other State Facilities**

**38-0406-1201** Temporary Rulemaking, Bulletin Vol. 12-5 (eff. 4-17-12)T

**38-0406-1201** Amendment to Temporary Rulemaking, Bulletin Vol. 12-6 (eff. 5-14-12)T

**38-0406-1201** Rescission of Temporary Rulemaking, Bulletin Vol. 12-10 (eff. 10-3-12)T

**38-0406-1202** Temporary and Proposed Rulemaking, Bulletin Vol. 12-10 (eff. 10-3-12)T

**38.04.07, Rules Governing Use of The Interior of State Property in the Capitol Mall and Other State Facilities**

**38-0407-1201** Temporary Rulemaking, Bulletin Vol. 12-5 (eff. 4-19-12)T

**38-0407-1201** Rescission of Temporary Rulemaking, Bulletin Vol. 12-10 (eff. 10-3-12)T

**38-0407-1202** Temporary and Proposed Rulemaking, Bulletin Vol. 12-10 (eff. 10-3-12)T

**38.04.08, Rules Governing Use of Idaho State Capitol Exterior**

**38-0408-1201** Temporary Rulemaking, Bulletin Vol. 12-5 (eff. 4-17-12)T

**38-0408-1201** Amendment to Temporary Rulemaking, Bulletin Vol. 12-6 (eff. 5-14-12)T

**38-0408-1201** Rescission of Temporary Rulemaking, Bulletin Vol. 12-10 (eff. 10-3-12)T

**38-0408-1202** Temporary and Proposed Rulemaking, Bulletin Vol. 12-10 (eff. 10-3-12)T

***IDAPA 39 -- IDAHO TRANSPORTATION DEPARTMENT***



***39.02.12, Rules Governing Issuing Certificates of Title and Bonded Certificates of Title*****39-0212-1201** Temporary and Proposed Rulemaking, Bulletin Vol. 12-9 (eff. 8-1-12)T***39.02.60, Rules Governing License Plate Provisions*****39-0260-1201** Temporary and Proposed Rulemaking, Bulletin Vol. 12-9 (eff. 7-1-12)T***39.02.61, Rules Governing License Plates for Governmental Agencies and Taxing Districts*****39-0261-1201** Proposed Rulemaking, Bulletin Vol. 12-10***39.02.71, Rules Governing Drivers License Violation Point Count System*****39-0271-1201** Proposed Rulemaking, Bulletin Vol. 12-10***39.03.04, Rules Governing Movement of Disabled Vehicles*****39-0304-1201** Temporary and Proposed Rulemaking (New Chapter), Bulletin Vol. 12-9 (eff. 8-1-12)T***39.03.10, Rules Governing When An Overlegal Permit Is Required*****39-0310-1201** Temporary and Proposed Rulemaking, Bulletin Vol. 12-9 (eff. 8-1-12)T***39.03.41, Rules Governing Traffic Control Devices*****39-0341-1201** Temporary and Proposed Rulemaking, Bulletin Vol. 12-9 (eff. 7-20-12)T***39.03.42, Rules Governing Highway Right-of-Way Encroachments on State Rights-of Way*****39-0342-1201** Temporary and Proposed Rulemaking (Fee Rule), Bulletin Vol. 12-10 (eff. 10-1-12)T***39.04.02, Rules Governing the Marking of Hazards to Air Flight*****39-0402-1201** Temporary and Proposed Rulemaking, Bulletin Vol. 12-9 (eff. 7-1-12)T***IDAPA 46 -- BOARD OF VETERINARY MEDICAL EXAMINERS******46.01.01, Rules of the State of Idaho Board of Veterinary Medicine*****46-0101-1201** Proposed Rulemaking, Bulletin Vol. 12-9***IDAPA 47 -- DIVISION OF VOCATIONAL REHABILITATION******47.01.01, Rules of the Idaho Division of Vocational Rehabilitation*****47-0101-1201** Temporary Rulemaking, Bulletin Vol. 12-4 (eff. 2-15-12)T**47-0101-1202** Proposed Rulemaking, Bulletin Vol. 12-10***IDAPA 52 -- IDAHO STATE LOTTERY COMMISSION******52.01.02, Gaming Rules of the Idaho State Lottery Commission*****52-0102-1201** Proposed Rulemaking, Bulletin Vol. 12-10***52.01.03, Rules Governing Operations of the Idaho State Lottery*****52-0103-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-8**52-0103-1203** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-9**52-0103-1201** Proposed Rulemaking (Fee Rule), Bulletin Vol. 12-10**52-0103-1202** Proposed Rulemaking, Bulletin Vol. 12-10***IDAPA 54 -- OFFICE OF THE STATE TREASURER***

**54.03.01, Idaho Unclaimed Property Administrative Rules****54-0301-1201** Proposed Rulemaking, Bulletin Vol. 12-10**IDAPA 57 -- SEXUAL OFFENDER MANAGEMENT BOARD****57.01.01, Rules of the Sexual Offender Management Board****57-0101-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-10**IDAPA 58 -- DEPARTMENT OF ENVIRONMENTAL QUALITY**

- 58-0000-1201** The Cascade Reservoir Tributary TMDL Addendum (HUC 17050123), Bulletin Vol. 12-1  
**58-0000-1202** The Goose Creek Subbasin Temperature TMDL Addendum (HUC 17040211), Bulletin Vol. 12-3  
**58-0000-1203** The Raft River Subbasin Temperature TMDL Addendum (HUC 17040210), Bulletin Vol. 12-3  
**58-0000-1204** Coeur d'Alene Lake Tributaries Temperature TMDL Addendum (HUC 17010303), Bulletin Vol. 12-3  
**58-0000-1205** The South Fork Salmon River Subbasin Temperature TMDL and Revised Sediment Targets Addendum (HUC 17060208), Bulletin Vol. 12-4  
**58-0000-1206** Lochsa River Subbasin Temperature TMDLs (HUC 17060303), Bulletin Vol. 12-6  
**58-0000-1207** American Falls Subbasin TMDL Plan (HUC 17040206), Bulletin Vol. 12-6  
**58-0000-1208** The Owyhee River Watershed TMDL Temperature Addendum (HUC 17050104, 17050105 & 17050107), Bulletin Vol. 12-7

**58.01.01, Rules for the Control of Air Pollution in Idaho**

- 58-0101-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-3  
**58-0101-1201** Proposed Rulemaking, Bulletin Vol. 12-6  
**58-0101-1202** Temporary and Proposed Rulemaking, Bulletin Vol. 12-6 (eff. 6-6-12)T  
**58-0101-1203** Proposed Rulemaking, Bulletin Vol. 12-8

**58.01.02, Water Quality Standards****58-0102-1201** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-9**58.01.05, Rules and Standards for Hazardous Waste****58-0105-1201** Proposed Rulemaking, Bulletin Vol. 12-8**58.01.08, Idaho Rules for Public Drinking Water Systems**

- 58-0108-1101** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 11-10  
**58-0108-1101** Proposed Rulemaking, Bulletin Vol. 12-5

**58.01.23, Rules of Administrative Procedure Before the Board of Environmental Quality****58-0123-1201** Proposed Rulemaking, Bulletin Vol. 12-6**IDAPA 59 -- PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO (PERSI)****59.01.03, PERSI Contribution Rules**

- 59-0103-1201** Temporary Rulemaking, Bulletin Vol. 12-3 (12-6-11)T  
**59-0103-1201** Proposed Rulemaking, Bulletin Vol. 12-5  
**59-0103-1201** Adoption of Pending Rule, Bulletin Vol. 12-7 (eff. \*PLR 2013)

# Subject Index

## A

- Abbreviations
  - AAVLD, American Association of Veterinary Laboratory Diagnosticians 29
  - APHIS, Animal & Plant Health Inspection Service 29, 31
  - AVIC, Area Veterinarian in Charge 29, 31
  - AZA, Association of Zoos & Aquariums 29, 31
  - CF, Complement Fixation Test 31
  - CFR, Code of Federal Regulations 29, 31
  - CWD, Chronic Wasting Disease 29, 31
  - CWDP, Chronic Wasting Disease Program 29
  - EIA, Equine Infectious Anemia 31
  - EVA, Equine Viral Arteritis 31
  - ISDA, Idaho State Department of Agriculture 29
  - NAEBA, North American Elk Breeders Association 29, 31
  - NPIP, National Poultry Improvement Plan 31
  - NVSL, National Veterinary Services Laboratory 29
  - PCR, Polymerase Chain Reaction 31
  - RDGF, Red Deer Genetic Factor 31
  - TB, Tuberculosis 29, 31
  - UM&R, Uniform Methods & Rules 29, 31
  - USDA, United States Department of Agriculture 29, 31
  - VHSV, Viral Hemorrhagic Septicemia Virus 31
  - VS, Veterinary Services 29, 31
- Abbreviations, IDAPA 15.06.03 284
  - BHS, Idaho Bureau of Homeland Security 284
  - GHz, Gigahertz 284
  - I.P. Internet Protocol 284
  - LMR, Land Mobile Radio 284
  - PSC, Public Safety Communications 284
- Acceptable Charges For Medical Services Provided By Other Providers Under The Idaho Workers' Compensation Law 436
  - Acceptable Charge 437
  - Adoption of Standard 437
  - Disputes 437
- Acceptable Charges For Medical Services Provided By Physicians Under The Idaho Workers' Compensation Law 433
  - Acceptable Charge 433
  - Adjustment of Conversion Factors 435
  - Adoption of Standard for Physicians 433
  - Anesthesiology 435
  - Coding 435
  - Conversion Factors 433
  - Medicine Dispensed By Physicians 436
  - Services Without CPT Code, RVU or Conversion Factor 435
- Acceptable Charges For Medicine Provided By Pharmacies 436
  - Acceptable Charge 436
  - Adoption of Standards for Pharmacies 436
  - Disputes 436
- Access 676
- Access To Department Properties 75
  - Access & Egress Control 75
  - Contraband Prohibited 76
  - Persons Subject to Search 75
  - Photo Identification Required 76
  - Termination of Visit, Tour, Sanctioned Activities, & Services 76
  - Vehicles Subject to Search 76
- Acknowledgment 808
  - Acknowledgment Letter 808
  - Defective Appeal 808
- Adjustments To Taxable Income --
  - Additions Required Of All Taxpayers 701
  - Capital Loss Carryover Deduction 701
  - Interest & Dividend Income Exempt From Federal Taxation 702
  - Interest Expense Attributable to Tax-Exempt Interest Income 702
  - Net Operating Loss Deduction 701
  - Special First-Year Depreciation Allowance 702
  - State & Local Income Taxes 701
- Adjustments To Taxable Income --
  - Additions Required Only Of Individuals 702
  - Certain Expenses of Eligible Educators 703
  - Lump Sum Distributions 702
  - State & Local Sales Tax 703
  - Withdrawals from an Idaho College Savings Program 702
  - Withdrawals from an Idaho Medical Savings Account 702
- Adjustments To Taxable Income --
  - Subtractions Available Only To Individuals 703
  - Adoption Expenses 705
  - Alternative Energy Devices 704
  - Capital Gains 705
  - Energy Efficiency Upgrades 704
  - Health Insurance Costs 705
  - Household & Dependent Care Services 704
  - Household Deduction for Elderly or Developmentally Disabled Dependents 704
  - Idaho College Savings Program 705
  - Idaho Medical Savings Account 705
  - Income Not Taxable by Idaho 703
  - Military Compensation for Service Performed Outside Idaho 703
  - Reparations to Displaced Japanese Americans 705
  - Retirement Benefits 704
  - Self-Employed Worker's Compensation Insurance Premiums 704
  - Social Security & Railroad Retirement Benefits 704
  - Standard or Itemized Deduction 703
  - Unused Net Operating Losses of Estates & Trusts 705
- Administrative Appeal 932
  - Appeal Process 933
  - Commencement 932
  - Process Hold 933
- Admission Procedures 166
  - Admission Preferences 167
  - Admission Procedures for Approved Charter Schools 169
  - Enrollment Deadline 166
  - Enrollment Opportunities 166
  - Equitable Selection Process 168
  - Final Selection List 169
  - Model Admission Procedures 166
  - Notification & Acceptance Process 169
  - Priority of Preferences for Initial Enrollment 167
  - Priority of Preferences for Subsequent Enrollment Periods 167
  - Proposed Attendance List for Lottery 168
  - Requests for Admission 166
  - Subsequent School Years 169
- Adoption And Incorporation By Reference Of The Idaho State Plumbing Code 84
- Adoption Of Attorney General's Idaho Rules Of Procedure 282
- ADS Systems
  - Institutional Facilities 657
    - Drug Returns 657
    - Pharmacist Review 657
    - Product Packaging & Labeling 657
    - Supervising Pharmacy Identification 658
    - Wasted Controlled Substances 658
  - Minimum Standards 654
  - ADS System Used for Tablets or Capsules 655
  - Multiple System Documentation 654
  - Prepackaged Bulk Drug Cartridges or Containers 655
  - Stocked Drug Documentation 654
  - System Access & Transaction

- Documentation 655
- System Access, Monitoring, & Control 654
- System Filling, Stocking, Replenishing 654
- System Registration & Approved Utilization Locations 654
- System Security & Patient Confidentiality 654
- Temperature Sensitive Drugs 655
- Ads Systems
  - Self-Service Systems 656
    - Counseling 657
    - Dispensing Restrictions 656
    - Packaging & Labeling 657
    - System Requirements 656
- Adult DD Waiver Services
  - Coverage & Limitations 345
  - Adult Day Health 349
  - Behavior Consultation/Crisis Management 349
  - Chore Services 346
  - Dental Services 349
  - Environmental Accessibility Adaptations 347
  - Home Delivered Meals 348
  - Non-Medical Transportation 347
  - Personal Emergency Response System 348
  - Place of Service Delivery 349
  - Residential Habilitation 345
  - Respite Care 347
  - Self Directed Community Supports 349
  - Skilled Nursing 349
  - Specialized Medical Equipment & Supplies 348
  - Supported Employment 347
- Provider Qualifications & Duties 350
  - Adult Day Health 355
  - Behavior Consultation or Crisis Management 354
  - Chore Services 353
  - Dental Services 355
  - Environmental Accessibility Adaptations 353
  - Home Delivered Meals 354
  - Non-Medical Transportation 353
  - Personal Emergency Response System 354
  - Residential Habilitation -- Certified Family Home (CFH) 351
  - Residential Habilitation -- Supported Living 350
  - Respite Care 353
  - Service Supervision 355
  - Skilled Nursing 354
  - Specialized Medical Equipment & Supplies 354
  - Supported Employment 353
- Adult Developmental Disability Services Prior Authorization Coverage & Limitations 358
- DD Waiver Services 358
- Developmental Disabilities Agency Services 359
- Service Coordination 359
- Plan Of Service 360
  - Addendum to the Plan of Service 362
  - Annual Reauthorization of Services 362
  - Community Crisis Supports 362
  - Complaints and Administrative Appeals 363
  - Content of the Plan of Service 361
  - Informed Consent 361
  - No Duplication of Services 360
  - Plan Development 360
  - Plan Monitoring 360
  - Prior Authorization Outside of These Rules 360
  - Provider Implementation Plan 361
  - Provider Status Reviews 361
  - Qualifications of a Paid Plan Developer 360
- Procedural Requirements 359
  - Assessment for Plan of Service 359
  - Behavioral or Psychiatric Needs 360
  - Medical Condition 360
  - Medical, Social, & Developmental History 359
  - Physician's History & Physical 359
  - SIB-R 359
- Advertising 590
  - Contains a Misrepresentation of Fact 590
  - Creates False or Unjustified Expectations of Beneficial Treatment or Successful Cures 590
  - Deceptive or Misleading Heading 590
  - Failure to Perform 590
  - Misleading or Deceptive 590
- Aged Or Disabled Waiver Services Coverage & Limitations 330
  - Adult Day Health 330
  - Adult Residential Care Services 330
    - Attendant Care 331
    - Chore Services 332
    - Companion Services 332
    - Consultation 332
    - Environmental Accessibility Adaptations 333
    - Habilitation 334
    - Home Delivered Meals 333
    - Homemaker Services 333
    - Non-Medical Transportation 331
    - Personal Emergency Response System 333
    - Respite Care 334
- Skilled Nursing 334
- Specialized Medical Equipment & Supplies 331
- Supported Employment 335
- Definitions 327
  - Employer of Fact 328
  - Employer of Record 327
  - Individual Service Plan 327
  - Participant 328
  - Personal Assistance Agency or Agency 327
  - Uniform Assessment Instrument (UAI) 327
- Dental Services 333
- Eligibility 328
  - Critical Indicator - 12 Points Each 328
  - Functional Level for Adults 328
  - Has a Disabling Condition 328
  - High Indicator - 6 Points Each 328
  - Medium Indicator - 3 Points Each 328
  - Nursing Facility Level of Care, Adults 329
  - Requires Such Services 328
  - Safe in a Non-Institutional Setting 328
- Nursing Service Provider Qualifications 340
- Participant Eligibility Determination 329
  - Admission to a Nursing Facility 329
  - Redetermination Process 329
  - Requirements for Determining Participant Eligibility 329
- Procedural Requirements 336
  - Individual Service Plan 336
  - Pre-Authorization Requirements 336
  - Provider Records 338
  - Provider Responsibility for Notification 338
  - Records Retention 338
  - Requirements for a Fiscal Intermediary (FI) 338
  - Role of the Department 336
  - Service Delivered Following a Written Plan of Care 337
  - UAI Administration 336
- Provider Qualifications & Duties 339
  - Adult Day Health 341
  - Adult Residential Care Providers 340
  - Attendant Care 342
  - Chore Services 344
  - Consultation Services 340
  - Day Rehabilitation Provider Qualifications 344
  - Dental Services 345
  - Employment Status 339
  - Environmental Accessibility

- Adaptations 342
- Fiscal Intermediary Services 339
- Home Delivered Meals 340
- Homemaker Services 342
- Non-Medical Transportation Services 341
- Personal Emergency Response Systems 341
- Provider Qualifications 339
- Residential Habilitation Program
  - Coordination for Certified Family Home Providers 343
- Residential Habilitation Supported Living 342
- Respite Care 344
- Skilled Nursing Service 340
- Specialized Medical Equipment & Supplies 340
- Supported Employment 344
- Provider Reimbursement 345
  - Calculation of Fees 345
  - Fee for Services 345
  - Provider Claims 345
- Aircraft & Flying Services 721
  - Aerial Contracting Services 723
  - Air Ambulance Service 723
  - Aircraft Held for Resale 723
  - Definitions 721
  - Federal Law Prohibits States From Taxing Sales of Air Transportation 723
  - Flying Instructions 723
  - Fuel 724
  - Recreational Flights 723
  - Rentals & Leases of Aircraft 723
  - Sales of Aircraft 722
  - Sales of Aircraft Repair Parts to Nonresidents 723
- Allocation Of Funds 117
- Alternate Routes To Certification 151
- Alternative Authorization -- Content Specialist 152
  - Alternative Route Preparation Program -- College/University Preparation 153
  - Initial Qualifications 152
- Alternative Authorization -- Teacher To New Certification 152
- Alternative Authorization -- Teacher To New Certification (Effective July 1, 2006)
  - Alternative Route Preparation Program 152
  - Initial Qualifications 152
- Alternative Dispute Resolution 818
  - Alternative Resolution 818
  - Confidentiality 818
  - Neutral 818
- Ambulatory Surgical Centers, Covered Services Under Basic Plan Benefits 301
- Amusement Devices 730
  - Cross-Reference 731
  - Other Operated Amusement Machines or Games 731
- Requirement to Obtain Permit 730
- Animals 898, 908, 916
  - Domestic Animals 899, 917
  - Wildlife 898, 916
- Answer To Appeal 808
- Appeal Relating To The Denial Of A Request To Revise A Charter Or A Charter Revocation Decision 175
  - Appointment of Charter Appeal Committee or Public Hearing Officer 175
  - Final Decision and Order by the Board 176
  - Hearing Record 175
  - Notice of Hearing 175
  - Prehearing Conference 175
  - Public Hearing 175
  - Recommended Findings 175
  - Submission of Appeal 175
- Appeal To The Board Relating To The Denial Of A Request To Form A New Public Charter School 173
  - Appointment of Charter Appeal Committee or Public Hearing Officer 174
  - Final Decision and Order by the Board 174
  - Notice of Hearing 174
  - Public Hearing 173
  - Recommended Findings 174
  - Submission of Appeal 173
- Appeals 921
  - Contested Cases 921
  - Informal Disposition 921
  - Judicial Review 921
  - Requesting an Appeal 921
  - Time for Appeal 921
- Applicants Who Move Out Of Idaho 292
- Application 604
  - Applications Must Be Complete 604
  - Filing an Application 604
  - Lack of Activity 604
  - Supplemental Documents 604
- Application & Payment Of Use Tax 727
  - Imposition of Use Tax 727
  - Out-of-State Purchases 727
  - Receipt Showing Sales Tax Paid 727
  - Removal from This State 728
  - Specifically Excluded From the Definition of Both Use & Storage Are 727
  - Storage 727
  - Tangible Personal Property Removed From Inventory 728
- Taxes Paid to Another State 727
  - Use 727
  - Use Undeterminable at Time of Purchase 728
- Application Fees 956
  - Fee Administration 956
  - Fee Schedule 956
  - Miscellaneous Costs 957
  - Waivers 957
- Application For Licensure -- Advanced Practice Registered Nurse 522
  - Application Form 522
  - Criminal Background Check 522
  - Fee 522
  - National Certification 522
  - Official Transcript 522
- Application For Licensure & Permits 500
  - All Applications 500
  - Application for Inactive License 501
  - Application for Polysomnography Related Respiratory Care Practitioner 502
  - Application for Respiratory Care & Polysomnography Related Respiratory Care Practitioner 502
  - Application for Respiratory Care Practitioner 501
  - Permits 503
- Application For Licensure Of Graduates Of Schools Of Nursing Located Outside The United States, Its Territories, Or Commonwealths 542
  - Application Form 542
  - Criminal Background Check 542
  - Employment Reference 542
  - Fee 542
  - Official Transcript 542
  - Verification 542
  - Verification of Licensure 542
- Application For Nursery Inspection 40
- Application For Permit To Construct, Modify Or Maintain An Injection Well
  - Other Information 881
- Application For Permit To Practice, Demonstrate, Or Teach Cosmetology 548
- Applications & Permits 942
  - Administration 942
  - Applicant to Be Informed 942
  - Application Forms 942
  - Denial of Application 943
  - Department Held Harmless 943
  - Encroachment Conflicts 942
  - Local Highway Agency Authority 942
  - Payment for Impacted Highway Features 942
  - Permit Requirements 943
  - Required 942
  - Review Process 942
  - Void Application 943
  - Work Prior to Approval 942
- Applications & Processing 858
  - Application Process 458
  - Eligible Applicant 458
  - Expiring Leases 460
  - Rental Deposit 460

- Applying The Penalty Period Of  
  Restricted Coverage 296  
  Penalty Period for Transfer Prior to  
    February 8, 2006 296  
  Penalty Period for Transfers On or  
    After February 8, 2006 296
- Approval Of Continuing Education  
  Courses 588, 608  
  A College or University 608  
  Accredited Schools 588  
  Federal, State or Local Governmental  
    Entities 608  
  Licensee Course Approval 609  
  National and State Massage Therapy  
    Associations 608  
  NCCAOM 588  
  Other Courses May Be Approved By  
    The Board 588  
  Provider Course Approval 608
- Approval Of Local Manufactured Home  
  Installation Inspection  
  Programs 106  
  Division Approval 106  
  Voluntary Withdrawal 106
- Approval Of Schools Of  
  Optometry 558
- Approval Standards for Registration of  
  Proprietary Schools 124  
  Standard I - Legal Status &  
    Administrative Structure 124  
  Standard II - Courses or Courses of  
    Study 125  
  Standard III - Student Support  
    Services 125  
  Standard IV - Faculty/Instructor  
    Qualifications &  
    Compensation 126  
  Standard V - Resources, Finance,  
    Facilities, & Instructional  
    Resources 126
- Approvals & Denials Of A Permit  
  Application 920  
  Basis for Denial 920  
  Period for Approval or Denial 920
- Approved Examinations 605  
  Date of Exam 606  
  Successful Passage 606
- Architectural Intern 545  
  IDP Enrollment 545  
  Prohibitions 545  
  Record 545  
  Supervision 545
- Area Closures 897, 915
- Areas Closed To Hunting & Trapping,  
& Trapping On Game Preserves &  
Wildlife Management Areas 279
- Areas Closed To Hunting Of Game  
  Birds 264  
  Geese 265  
  General 264  
  Migratory Game Birds 265
- Assessment Of Transient Personal  
  Property 764  
  Definitions 764
- Exempt Transient Personal  
  Property 765
- Nontaxable Transient Personal  
  Property 765
- Overassessment Prohibited 765
- Assessor's Plat Book 756
- Assessor's Plat Book  
  Map Scales 756  
  Plat Maps 756  
  Property Ownership Records 757  
  Section Outlines 756
- Assignments 477  
  Application 478  
  Denial 478  
  Full or Partial 478  
  Joint Principal 478  
  Overriding Royalty Disclosure 478  
  Prior Written Approval 477  
  Responsibility 478  
  Segregation of Assignment 478
- Assistance Discount Rate 430
- Assistance Eligibility  
  Requirements 430  
  Application 430  
  Head of Household 430  
  Income Limit 430
- Attending 320
- Authority To Close Complaints/  
  Cases 514
- Authorization By Permit 849
- Authorizations, Prohibitions &  
  Exemptions 846  
  Authorizations 846  
  Exemptions 848  
  Prohibitions 846
- Authorized Chartering Entity  
  Responsibilities 172  
  Compliance Monitoring 172  
  Corrective Action Plan 172  
  Failure to Cure 172  
  Written Notice of Defect 172
- Auxiliary Lanes 952  
  Auxiliary Lanes Required by Planned  
    Development 952  
  Auxiliary Lanes to Enhance Roadside  
    Business 952  
  Traffic Engineering Study 952
- B**
- Backup Withholding By Pass-Through  
  Entities 694  
  Backup Withholding Returns 696  
  Exceptions to Backup  
    Withholding 694  
  Failure to File Returns or Remit  
    Backup Withholding 696  
  Idaho Nonresident Owner  
    Agreement 695  
  In General 694  
  Payment of Backup  
    Withholding 695
- Beer Tax Returns & Reports 794  
  Due Date of Reports 794  
  Forms Provided or Approved by Tax  
    Commission 794  
  In-State Brewers 794  
  Inventory Reporting Methods 794  
  Requirements of a Valid Return 795  
  Weekend or Holiday Due Date 794
- Bicycles, Skates, Skateboards, Scooters,  
& Other Non-Motorized  
  Transportation 898, 908, 916
- Billing & Payment Requirements For  
  Medical Services & Procedures  
  Preliminary To Dispute  
  Resolution 437  
  Authority 437  
  Dispute Resolution Process 438  
  Failure of Payor to Finally  
    Object 438  
  Partial Payment 437  
  Payor Shall Pay or Issue Final  
    Objection 438  
  Preliminary Objections & Requests  
    for Clarification 437  
  Prompt Payment 437  
  Provider Reply to Preliminary  
    Objection or Request for  
    Clarification 438  
  Provider to Furnish Information 437  
  Time Periods 437
- Board Certification Of Optometrist  
  Authorized To Obtain & Use  
  Pharmaceutical Agents 563  
  The Right to Obtain & Use Topically  
    Applied Diagnostic  
    Pharmaceutical Agents 563  
  The Right to Prescribe, Administer &  
    Dispense Therapeutic  
    Pharmaceutical Agents 564
- Board Of Pharmacy Licensure &  
  Registration 623  
  Idaho Controlled Substances Act  
    Registrations 623  
  Pharmacy Practice Act Licenses &  
    Registrations 623
- Bond Requirements 481  
  Minimum Bond 481  
  Operator Bond 481  
  Period of Liability 481  
  Statewide Bond 481
- Briefs 814
- Budget Certification - Dollar  
  Certification Form (L-2 Form) 749  
  Budget Certification 750  
  Budget Certification Requested  
    Documents 750  
  Cross Reference for School Districts  
    with Tuition Funds 754  
  Definitions 749  
  L-2 Form Contents 751  
  Special Provisions for Calculating  
    Total Levy Rate for Taxing  
    Districts or Units With Multiple  
    Funds 753  
  Special Provisions for Cities With  
    Existing Library Operations or  
    Services Consolidating With Any

- Library District 753
  - Special Provisions for Fire Districts
    - Levying Against Operating Property 752
  - Special Provisions for Interim Abatement Districts 754
  - Special Provisions for Levies for Payment of Judgments by Order of Court 754
  - Special Provisions for Library Districts Consolidating With Any City's Existing Library Operations or Services 753
  - Special Provisions for Property Tax Replacement other than Replacement Money Received for Property Subject to the Exemption Provided in Section 63-602KK, Idaho Code 752
  - Special Provisions for Property Tax Replacement Received for Property Subject to the Exemption Provided in Section 63-602KK, Idaho Code 753
  - Special Provisions for School Districts' Tort Funds - Hypothetical New Construction Levy 753
  - Budget Certification Relating To New Construction & Annexation 776
    - Change in Status 780
    - Definitions 776
    - Limitation on Annexation & New Construction Roll Value 781
    - Manufactured Housing 780
    - New Construction Roll Listing 777
    - Notification of New Construction Roll & Annexation Values 781
    - Partial New Construction Values 780
    - Special Provisions for Value Increases & Decreases 777
  - C**
  - Care Levels & Monthly Allowances 298
  - Carryover Funds 117
  - Centralized Pharmacy Services 676
    - Audit Trail Documentation 677
    - Communication 677
    - Continuous Quality Improvement Program 677
    - Exemption 677
    - Location 677
    - Policies & Procedures 677
    - Privacy 677
    - Secure Common Electronic File 677
    - Training 677
    - Written Contract 676
  - Certificates For Resale & Other Exemption Claims 731
    - Burden of Proof 731
    - Description and Proper Execution of Approved Forms 731
    - In General 731
    - Purchaser's Responsibility 735
    - Qualified Buyers for Purposes of Resale 731
    - Qualified Buyers for Purposes Other Than Resale 731
    - Seller's Responsibility - Purchases Claimed Exempt From Sales Tax for Reasons Other Than Resale 733
    - Seller's Responsibility -- Purchases for Resale 733
    - Timely Acceptance of Certificates 736
  - Certification Marking
    - Certified Compressed Forage Bale Binding Material 55
    - Forage Cube/Pellet Tag/Label 54
    - Forage Tag 54
    - North American Twine 54
  - Certification Of Sales Tax
    - Distribution 746
    - Corrections 747
    - Current Fiscal Year 746
    - Determination Date & Eligibility 746
    - Incorporated City 746
    - Market Value for Assessment Purposes 746
    - Most Current Census 746
    - Notification of Value 747
    - Quarterly Certification 746
    - Valuation Estimates 746
  - Change In Land Use 461
  - Charter Revisions 172
    - Approval of Proposed Charter Revision 173
    - Denial of Proposed Charter Revision 173
    - Limited Review 172
    - Procedure for Reviewing Request for Charter Revision 172
    - Request for Revision 172
  - Child Custody 288
  - Children's Developmental Disability
    - Prior Authorization (PA) Plan Of Service Process 365
  - Children's Developmental Disability
    - Prior Authorization (PA) Definitions 363
      - Assessment 363
      - Baseline 363
      - Child 363
      - Family 363
      - Family-Centered Planning Process 363
      - Family-Centered Planning Team 363
      - ICF/ID 363
      - Individualized Family Service Plan (IFSP) 363
      - Level of Support 363
      - Medical, Social, & Developmental Assessment Summary 363
  - Plan Developer 363
  - Plan Monitor 364
  - Plan of Service 364
  - Practitioner of the Healing Arts, Licensed 364
  - Prior Authorization (PA) 364
  - Provider Status Review 364
  - Right Care 364
  - Right Outcomes 364
  - Right Place 364
  - Right Price 364
  - Services 364
- Plan Of Service Process
    - Addendum to the Plan of Service 366
    - Annual Reauthorization of Services 366
    - Informed Consent 365
    - No Duplication of Services 365
    - Plan Development & Monitoring 365
    - Plan Monitoring 365
    - Plan of Service Development 365
    - Program Implementation Plan 366
    - Provider Status Reviews 365
  - Provider Reimbursement 366
    - Annual Re-Evaluation 367
    - Individualized Budget Methodology 367
    - Participant Notification of Budget Amount 367
  - Children's HCBS State Plan Option
    - Definitions 394
      - Agency 394
      - Annual 394
      - Clinical Supervisor 394
      - Community 394
      - Developmental Disabilities Agency (DDA) 394
      - Home & Community Based Services State Plan Option 394
      - Human Services Field 394
      - Infant Toddler Program 395
      - Integration 395
      - Paraprofessional 395
      - Professional 395
      - Support Services 395
    - Participant Eligibility 395
      - Age of Participants 395
      - Eligibility Determinations 395
      - Financial Eligibility 395
    - Procedural Requirements 395
      - Family Education Documentation 396
      - General Requirements for Program Documentation 395
      - Habilitative Supports Documentation 396
      - Reporting Requirements 396
    - Provider Qualifications & Duties 396
      - DDA Services 399
      - Family Education 397

- Family Education for Children
  - Birth to Three 398
- Habilitative Support Staff 397
- Requirements for Clinical Supervisor 399
- Requirements for Collaboration 399
- Requirements for Quality Assurance 399
- Respite 396
- Children's Home & Community Based Services (HCBS) State Plan Option 393, 394
- Children's Waiver Services 399
  - Procedural Requirements 400
    - Authorization of Services on a Written Plan 400
  - General Requirements for Program Documentation 400
  - Program Implementation Plan Requirements 400
  - Provider Responsibility for Notification 401
  - Records Maintenance 401
  - Reporting Requirements 401
- Provider Qualifications & Duties 401
  - Continuing Training Requirements for Professionals 404
  - Crisis Intervention 404
  - DDA Services 405
  - Family Training 401
  - Habilitative Intervention 402
  - Habilitative Intervention for Children Birth to Three 402
  - Interdisciplinary Training 401
  - Requirements for Clinical Supervision 404
  - Requirements for Collaboration with Other Providers 404
  - Requirements for Quality Assurance 404
  - Therapeutic Consultation 403
- Purpose of & Eligibility for Waiver Services 399
- Waiver Services Provided by a DDA or the Infant Toddler Program 400
- Citation 805
  - BTA Format 805
  - IDAPA Format 805
- City, County, School District, & Special District Or Unit Of Government
  - Abstracts Of Value And Identification Of Urban Renewal Increment And Partial Exemption Values 767
  - Cross Reference 768
  - Definitions 767
  - Indicate Increment & Exemption Values 767
  - Submittal of Corrections to Erroneous Abstracts or Related Documents 768
- Class II
  - Actions On Approved Permits 872
    - Causes for Modification or Revocation & Reissuance of Permits 872
  - Causes For Termination of Permits 873
  - Continuation of Expiring Permits 874
  - Minor Modifications of Permits 874
  - Modification, Revocation & Reissuance, or Termination of Permits 872
  - Records 875
  - Transfer of Permits 875
- Application Information 848
  - Application For A Permit 848, 849
    - Area of Review 855
    - Bonding 851
    - Construction Requirements 853
    - Contingency Plan 858
    - Corrective Action 856
    - Emergency Permits 857
    - Information to Be Considered By The Director 852
    - Request for Variance 858
    - Signatories to Permit Applications & Reports 850
  - Application Processing 858
    - Administrative Record for Draft Permits 859
    - Administrative Record for Final Permit 862
    - Draft Permits 858
    - Duration of Permits 863
    - Fact Sheet 858
    - Issuance & Effective Date Of Permit 862
    - Public Comments Requests For Public Hearings 861
    - Public Hearings 862
    - Public Notice of Permit Actions & Public Comment Period 859
    - Response to Comments 862
  - General Provisions 875
    - Effect of A Permit 876
    - Noncompliance & Program Reporting By The Director 876
    - Obligation to Raise Issues & Provide Information During The Public Comment Period 875
    - Stays of Contested Permit Conditions 876
  - Operating Requirements 869
    - Mechanical Integrity 870
    - Operating, Monitoring, & Reporting Requirements 870
    - Plugging & Abandoning Class II Wells 871
  - Permit Conditions 863
    - Conditions Applicable to All Permits 863
- Establishing Permit Conditions 867
- Requirements for Recording & Reporting of Monitoring Results 869
- Schedule of Compliance 868
- Class V
  - Criteria & Standards
    - Additional Information 880
    - Application For Permit To Construct, Modify Or Maintain An Injection Well 879
  - Application Information Required 879
  - Application Processing 882
  - Application Requirements for All Class V Wells, Except Those Class V Wells Authorized Without Permit 879
  - Consideration 883
  - Construction Requirements 884
  - Draft Permit 882
  - Inter-Agency Cooperation 879
  - Inventory Information & Permit Requirements 878
  - Issuance of Permit 883
  - Monitoring, Record Keeping & Reporting Requirements 888
  - Operational Conditions 884
  - Permanent Decommission 879
  - Permit Assignable 890
  - Permit Conditions & Requirements 883
  - Permit Requirements 879
  - Public Notice 882
  - Review by the Directors of Other State Agencies 882
  - Standards For The Quality Of Injected Fluids & Criteria For Location & Use 886
  - The Director's Action On Draft Permits & Duration Of Approved Permits 883
- Classification Of Injection Wells 841
  - Classification of Injection Wells 841
  - Subclassification 842
- Code Of Ethics 559, 610
  - Conduct of Practice 560
  - Confidentiality 560
  - Patient's Visual Welfare 559
  - Unprofessional Conduct 560
- Communication With Military Division, Bureau Of Homeland Security 282
- Filing 283
- Information 283
- Records Custodian 283
- Complaint Authority 512
  - Category One 512
  - Category Two 512
- Complaints 511
- Compliance Monitoring 179
  - Building Inspection Reports 179
  - Certificate of Occupancy 179



- Criminal History Checks 180
- Fire Marshal Report 179
- Health District Inspection Certificate 180
- Instructional Staff Certification 180
- Insurance Binders 180
- School Calendar 180
- Compliance With Law 901, 909, 919
- Computation Of Time 812
- Computer-Based Alternative Route To Teacher Certification 153
  - Approval of the Program 153
  - Eligibility 153
  - Interim Certificate 153
  - Interim Certificate Not Renewable 154
  - Requirements for Completion 153
  - Types of Certificates & Endorsements 154
- Conduct 806
- Confidentiality -- Protective Orders 822
- Conflict Auctions 464
  - Applicant Notification 464
  - Auction Bidding 464
  - Auction Procedures 464
  - High Bid Deposit 464
  - Minimum Bid 464
  - Two or More Applicants 464
  - Withdrawal After Auction 465
  - Withdrawal Prior to or Failure to Participate in an Auction 464
- Consent Agreement -- Defined -- Form & Contents 816
  - Additional 816
  - Consent Agreement Defined 816
  - Requirements 816
- Consolidation 809
- Consulting Teacher/Teacher Leader Endorsement 137
  - Mathematics Consulting Teacher - Eligibility for Endorsement 139
  - Special Education Consulting Teacher - Eligibility for Endorsement 137
- Content Of Continuing Education 609
- Continuing Education 609
- Content Of Continuing Education Courses 588
  - Category I 589
  - Category II 589
- Continuance 820
  - Consideration 820
  - Continuances 820
- Continuing Education 554, 582, 607
  - Approved Contact Hours, Limitations, & Required Documents 582
  - Carry Over & Duplication 555
  - Carryover of Continuing Education Hours 608
  - Compliance Audit 584
  - Contact Hours 582
  - Courses & Activities 555
  - Documentation 555, 608
  - Documentation of Attendance 582
  - Excess Hours 584
  - Exemption 608
  - Exemptions 556
    - Requirement 554, 607
    - Special Exemption 584
    - Verification 555
    - Waiver 608
  - Continuing Education Activities 609
  - Publishing Articles or Books 609
  - Self Study 609
  - Teaching a Course For The First Time, Not to Exceed Six Hours 609
- Continuing Education In Optometry 559
  - Additional Hours Required to Use Therapeutic Pharmaceutical Agents 559
  - Audit 559
  - Correspondence/Home Study Courses/Observation 559
  - Documentation of Attendance 559
  - Excess Hours 559
  - Hours Required, Advance Approval 559
  - Renewal Application Form 559
  - Waiver of Requirements 559
- Continuing Education Requirements 587
  - Carryover 588
  - Distance Learning & Independent Study 588
  - Requirement 588
  - Special Exemption 588
  - Verification of Attendance 588
- Controlled Substances Inventories 646
  - Annual Inventory Compliance 646
  - Annual Inventory of Stocks of Controlled Substances 646
  - Inventory After Discovery of Theft or Loss 646
  - Inventory on Addition to Schedule of Controlled Substances 646
  - Inventory on PIC or Director Change 646
  - Separate Inventories for Each Location 646
- PMP 629
  - Online Access to PMP 629
  - Profile Requests 630
  - Suspension, Revocation, or Restriction of PMP Access 630
  - Use Outside Scope of Practice Prohibited 629
- Positive Identification Required 645
  - Acceptable Identification 645
  - Identification Documentation 645
  - Personal Identification 645
  - Positive Identification Presumed 645
- Schedule I 680
  - Structural Compounds 680
  - Tetrahydrocannabinols 680
- County Auditor Requirement 809
  - Contents 809
  - Minutes 809
- Covered Services Under Basic Plan Benefits 301
  - Ambulatory Surgical Centers 301
  - Audiology Services 303
  - Dental Services 303
  - Durable Medical Equipment and Supplies 303
  - EPSDT Services 303
  - Essential Providers 303
  - Family Planning 302
  - Home Health Services 302
  - Hospital Services 301
  - Laboratory & Radiology Services 302
  - Mental Health Services 302
  - Other Practitioner Services 301
  - Physician Services & Abortion Procedures 301
  - Prescription Drugs 302
  - Prevention Services 302
  - Primary Care Case Management 302
  - Specific Pregnancy-Related Services 303
  - Substance Abuse Treatment Services 302
  - Therapy Services 303
  - Transportation 303
  - Vision Services 303
- CPE Requirements 627
  - ACPE or CME 627
  - Board Approved 627
  - Carryover of Certain Unused Units 627
  - Live Attendance 627
  - New Pharmacist Exemption 627
  - Pharmacy Law 627
- Credit For Qualifying New Employees Calculations Used To Determine The Credit & Credit Carryover 712
  - Calculating Number of Employees 713
  - Calculating the Number of New Employees 713
  - Carryover 714
  - Computing the Credit Earned 714
  - In General 712
  - Limitations 714
  - Pass-Through Entities 714
  - Qualifying for the Five Hundred Dollar (\$500) Credit 712
  - Qualifying for the One Thousand Dollar (\$1,000) Credit 712
  - Unitary Taxpayers 714
- Net Income Of A Trade Or Business 714
  - Net Income From the Taxpayer's

- Trade or Business 714
- Unitary Taxpayers 715
- Record-Keeping Requirements 715
  - Failure to Maintain Adequate Records 715
  - Information Required 715
- Revenue-producing Enterprise 712
  - In General 712
  - Multiple Activities 712
  - Seasonal or New Business 712
  - Unitary Taxpayers 712
- Criminal History & Background Check Requirements 322
  - Additional Criminal Convictions 322
  - Compliance With Department Criminal History Check 322
  - Providers Subject to Criminal History & Background Check Requirements 322
- Customer Appeals 961
- Customer Services 964
  - Authorization to Purchase 965
  - General Provisions 965
  - Provision of CRP (Community Rehabilitation Program) Services 965
  - Provision of Purchased Services Contingent upon Financial Need of the Customer 964
  - Residency 965
- D**
- Deceased Offenders 73
  - Autopsy & Inquest 74
  - Body Not Claimed 74
  - Delivery of the Body to a Funeral Home 74
  - Disposition of the Deceased Offender's Money & Property 74
  - Notifications 73
  - Offenders Housed in Non-Department Facilities 75
- Decisions & Orders 822
  - Decision on the Record 823
  - Decisions Dicta 822
  - Notice 823
  - Proposed Orders 822
  - Public Inspection 823
  - Submission for a Decision 822
- Deduction For Energy Efficiency Upgrades 687
  - Energy Efficiency Upgrade Measure Definition 688
  - Qualifying Date 688
  - Siding 688
- Deduction Of Certain Retirement Benefits 686
  - Disabled Individual 687
  - Married Individuals Filing Separate Returns 687
  - Publication of Maximum Deduction 687
  - Qualified Benefits 686
- Unremarried Widow or Widower 687
- Deer & Elk Tag Allocation 218
  - Allocation of Tags 218
  - Controlled Hunt Areas 218
- Defective, Insufficient Or Late Pleading 811
- Definitions 440, 457, 467, 603, 905
- A through D 323
  - Accrual Basis 323
  - Active Treatment 324
  - Activities of Daily Living (ADL) 324
  - Allowable Cost 324
  - Amortization 324
  - Appraisal 324
  - Assets 324
  - Attendant Care 324
  - Audit 324
  - Audit Reports 324
  - Auditor 324
  - Bad Debts 324
  - Bed-Weighted Median 324
  - Capitalize 325
  - Case Mix Adjustment Factor 325
  - Case Mix Index (CMI) 325
  - Certified Family Home 325
  - Chain Organization 325
  - Claim 325
  - Clinical Nurse Specialist 325
  - Common Ownership 325
  - Compensation 325
  - Control 325
  - Cost Center 325
  - Cost Component 325
  - Cost Reimbursement System 326
  - Cost Report 326
  - Cost Statements 326
  - Costs Not Related to Patient Care 326
  - Costs Related to Patient Care 326
  - Customary Charges 326
  - Day Treatment Services 326
  - Department 326
  - Depreciation 326
  - Developmental Disability (DD) 326
  - Direct Care Costs 327
  - Director 327
  - Durable Medical Equipment (DME) 327
  - Acceptable Tree Species 440
  - Act 440
  - Additional Hazard 440
  - Amortization 457
  - Animal Unit Month (AUM) 457
  - Approved Massage Program 603
  - Assignment 457
  - Associated By-Products or By-Product 467
  - Available State Lands 467
  - Average DBH 440
  - Best Management Practice (BMP) 440
  - Board 441, 457, 467, 603
  - Buffer Strip 441
  - Bureau 603
  - Camping 905
  - Capitol Annex 905
  - Capitol Mall Office Properties 905
  - Casual Exploration 468
  - Chemicals 441
  - Clinical Work 603
  - Code of Ethics 603
  - Commercial Products 441
  - Common Space 905
  - Completion 468
  - Condition of Adjoining Area 441
  - Conflict Application 457
  - Constructed Skid Trail 441
  - Contaminate 441
  - CPR 603
  - Cross-Ditch 441
  - Cull 441
  - Department 441, 457, 468, 905
  - Deterioration Rate 441
  - Direct Use 468
  - Director 441, 458, 468, 905
  - E Through K 412
    - Educational Services 412
    - Eligibility Rules 412
    - Emergency Medical Condition 412
    - Enhanced Plan 412
    - EPSDT 412
    - Equity 412
    - Facility 412
    - Fiscal Intermediary Agency 413
    - Fiscal Year 413
    - Forced Sale 413
    - Funded Depreciation 413
    - Generally Accepted Accounting Principles (GAAP) 413
    - Goodwill 413
    - Healthy Connections 413
    - Historical Cost 413
    - ICF/ID Living Unit 414
    - Improvements 414
    - Indirect Care Costs 414
    - Inflation Adjustment 414
    - Inflation Factor 414
    - Inspection of Care Team (IOCT) 414
    - In-State Care 414
    - Instrumental Activities of Daily Living (IADL) 415
    - Interest 415
    - Interest on Capital Indebtedness 415
    - Interest On Current Indebtedness 415
    - Interest Rate Limitation 415
    - Interim Reimbursement Rate (IRR) 415
    - Intermediary 415
    - Intermediate Care Facility for Persons With Intellectual Disabilities (ICF/ID) 415

- Keyman Insurance 415  
Electrical Generation 468  
Emergency Forest Practice 441  
Extension 458  
Fertilizers 441  
Field 468  
Fire Trail 441  
Forest Land 441  
Forest Practice 441  
Forest Regions 442  
Forest Type 442  
Fuel Quantity 442  
Geothermal Resources 468  
Ground Based Equipment 442  
Habitat Types 442  
Harvesting 442  
Hazard 443  
Hazard Offset 443  
Hazard Points 443  
Hazard Reduction 443  
Herd Stock 458  
Improvement Valuation 458  
Interior State Facilities 905  
L Through O 415  
Lease 415  
Leasehold Improvements 415  
Legal Representative 415  
Level of Care 415  
Licensed Bed Capacity 415  
Licensed, Qualified  
Professionals 415  
Lower of Cost or Charges 415  
MAI Appraisal 416  
Major Movable Equipment 416  
Medicaid 416  
Medicaid Related Ancillary  
Costs 416  
Medical Assistance 416  
Medical Care Treatment Plan 416  
Medical Necessity (Medically  
Necessary) 416  
Medical Supplies 416  
Medicare Savings Program 416  
Minimum Data Set (MDS) 417  
Minor Movable Equipment 417  
Necessary 417  
Negotiated Service Agreement  
(NSA) 417  
Net Book Value 417  
New Bed 417  
Nominal Charges 417  
Nonambulatory 417  
Nonprofit Organization 417  
Normalized Per Diem Cost 417  
Nurse Practitioner 417  
Nursing Facility (NF) 417  
Nursing Facility Inflation  
Rate 417  
Ordinary 418  
Out-of-State Care 418  
Lake 443  
Landowner 443  
Large Organic Debris (LOD) 443  
Lease 458, 468  
Lease Application 458  
Lessee 468  
Manageable Unit 458  
Management Plan 458  
Market Value 468  
Merchantable Material 443  
Merchantable Stand of Timber 443  
Mortgage Agreement 458  
Motorized Earth-Moving  
Equipment 468  
Multi-Agency Facilities 905  
Navigable Water Courses 468  
Noncommercial Forest Land 443  
Operating Area 443  
Operator 443, 468  
Ordinary High Water Mark 443  
Other State Properties 905  
Outstanding Resource Water 443  
Overriding Royalty 468  
Parking Facilities 905  
Partial Cutting 444  
Person 458, 468  
Prescribed Fire 444  
Present Condition of Area 444  
Proposed Management Plan 458  
Public Resource 444  
Record Title 469  
Reforestation 444  
Relief Culvert 444  
Reservoir or Pool 469  
Rules 444  
Security Personnel 905  
Shut In 469  
Site 444  
Site Factor 444  
Site Specific Best Management  
Practice 444  
Size of Thinning Block 444  
Slash 444  
Snags 444  
Soil Erosion 444  
Soil Stabilization 444  
Standards of Practice 603  
State 444  
State Business Day 906  
State Lands 469  
Stream 444  
Sublease 458  
Tenant Space 906  
Timber Owner 446  
Time of Year of Forest Practice 446  
Waste 469  
Definitions & Abbreviations (A --  
I) 636, 666  
Accredited School or College of  
Pharmacy 636, 666  
ACPE 636, 666  
Acute Care Hospital 636, 666  
ADS -- Automated Dispensing &  
Storage 636, 666  
CDC 636, 666  
Central Drug Outlet 666  
Central Pharmacist 666  
Central Pharmacy 636, 666  
Centralized Pharmacy Services 636,  
666  
Change of Ownership 636, 667  
Charitable Clinic or Center --  
Authorized Personnel 636, 667  
Chart Order 636, 667  
CME 636, 667  
COE -- Central Order Entry 636,  
667  
Collaborative Pharmacy  
Practice 637, 667  
Collaborative Pharmacy Practice  
Agreement 637, 667  
Continuous Quality Improvement  
Program 637, 667  
Correctional Facility 637  
CPE 637, 667  
CPEU 667  
DEA 637, 667  
Distributor 637, 667  
DME 637, 667  
Drug Order 637, 667  
Drug Product Selection 637, 667  
Drug Product Substitution 637, 668  
DTM -- Drug Therapy  
Management 637, 668  
Emergency Drugs 637, 668  
Executive Director 637, 668  
FDA 637, 668  
Flavoring Agent 637, 668  
Floor Stock 637, 668  
FPGEC 637  
HIPAA 638, 668  
Hospital System 638, 668  
Idaho State Board of Pharmacy or  
Idaho Board of Pharmacy 638,  
668  
Individually Identifiable Health  
Information 638, 668  
Institution Engaged in The Practice of  
Telepharmacy Across State  
Lines 638  
Institutional Pharmacy 638, 668  
Definitions & Abbreviations (J --  
R) 638, 661, 669  
LTCF -- Long-Term Care  
Facility 638, 661, 669  
Mail Service Pharmacy 669  
MPJE 638, 661, 669  
MTM -- Medication Therapy  
Management 638, 661, 669  
NABP 638, 661, 669  
NAPLEX 639, 661, 669  
NDC 639, 661, 669  
Non-Institutional Pharmacy 639,  
661, 669  
Parenteral Admixture 639, 661, 669  
Pharmaceutical Care Services 639,  
661, 669  
Pharmacist Extern 639, 662, 670  
Pharmacist Intern 640, 662, 670  
Pharmacy Operations 640, 662, 670  
PHI -- Protected Health  
Information 640, 662, 670

- PIC 640, 662, 670  
 PMP 640, 663, 670  
 Prepackaging 640, 663, 671  
 Prescriber 640, 663, 671  
 Prescriber Drug Outlet 640, 663, 671  
 R.N. 640, 663, 671  
 Readily Retrievable 640, 663, 671  
 Relative Contraindication 640, 663, 671  
 Remote Dispensing Site 640, 663, 671  
 Retail Non-Pharmacy Drug Outlet 640, 663, 671  
 Retail Pharmacy 640, 663, 671  
 Definitions & Abbreviations (S -- Z) 641  
 Sample 641  
 Secured Pharmacy 641  
 Skilled Nursing Facility 641  
 Student Pharmacist 641  
 Technician 641  
 Telepharmacy 641  
 Therapeutic Equivalent Drugs 641  
 Unit Dose 641  
 USP 641  
 USP-NF 641  
 VAWD -- Verified Accredited Wholesale Distributor 641  
 VDO -- Veterinary Drug Outlet 641  
 VDT -- Veterinary Drug Technician 641  
 Veterinary Drug Order 641  
 VIS 641  
 Definitions H - S, IDAPA 08.02.03, Rules Governing Thoroughness 160  
 Interdisciplinary or Integrated Assessment 160  
 International Baccalaureate (IB) 160  
 Laboratory 160  
 Learning Plan 160  
 Narrative 160  
 Norm-Referenced Assessment 160  
 On-Demand Assessment 160  
 One-to-One Mobile Computing Program 160  
 Online Course 160  
 Online Learning 160  
 Online Teacher (Instructor) 161  
 Performance Assessment 161  
 Performance Criteria 161  
 Performance-Based Assessment 161  
 Phonics 161  
 Portfolio 161  
 Print Awareness 161  
 Professional Development 161  
 Professional-Technical Education 162  
 Proficiency 162  
 School-to-Work Transition 162  
 Service Learning 162  
 Skill Certificate 162  
 Standardization 162  
 Standards 162  
 Standards-Based Education 162  
 Structured Work Experience 162  
 Student Learning Goals (Outcomes) 162  
 Synchronous Course 162  
 Definitions M Through Z, IDAPA 16.03.04 290  
 Migrant Farmworker Household 290  
 Minimum Utility Allowance (MUA) 290  
 Nonexempt 290  
 Nonprofit Meal Delivery Service 290  
 Overissuance 290  
 Parental Control 290  
 Participant 290  
 Program 290  
 Public Assistance 290  
 Recertification 290  
 Retail Food Store 290  
 Sanction 291  
 Seasonal Farmworker Household 291  
 Spouse 291  
 Standard Utility Allowance (SUA) 291  
 State 291  
 State Agency 291  
 Student 291  
 Supplemental Security Income (SSI) 291  
 Systematic Alien Verification for Entitlements (SAVE) 291  
 Telephone Utility Allowance (TUA) 291  
 Timely Notice 291  
 Tribal General Assistance 291  
 Twelve Month Contact 291  
 Verification 291  
 Verified Upon Receipt 291  
 Written Notice 291  
 Definitions Related To Advanced Practice Registered Nursing 517  
 Accountability 517  
 Advanced Practice Registered Nurse 517  
 Authorized Advanced Practice Registered Nurse 517  
 Certification 517  
 Certified Nurse Practitioner 517  
 Certified Nurse-Midwife 517  
 Certified Registered Nurse Anesthetist 517  
 Clinical Nurse Specialist 517  
 Collaboration 517  
 Consultation 517  
 Diagnosis 517  
 Intervention 518  
 Peer Review Process 518  
 Population Focus 518  
 Prescriptive & Dispensing Authorization 518  
 Referral 518  
 Scope of Practice of Advanced Practice Registered Nurse 518  
 Specialization 518  
 Definitions, IDAPA 02.06.13  
 Condiment Mustard 37  
 Department 37  
 Director 37  
 Green Manure Rapeseed 37  
 Person 37  
 Producer 37  
 Rapeseed 37  
 Types 37  
 Volunteer Rapeseed 37  
 Definitions, IDAPA 02.06.31  
 Agent 47  
 Approved Inspector 47  
 Bale 47  
 Bale Tag 47  
 Certificate of Inspection 47  
 Certification 47  
 Certification Markings 47  
 Certified Compressed Forage Bale Binding Material 47  
 Compressed Forage Bale 47  
 Department 48  
 Field 48  
 Field Certification Inspection 48  
 Forage 48  
 Forage Cube/Pellet Tag 48  
 Forage Cubes 48  
 Idaho State Noxious Weed Free 48  
 Idaho State Noxious Weed Free Standards 48  
 North American Noxious Weed Free 48  
 North American Standards 48  
 North American Twine 48  
 North American Weed Free Forage Certification Program 48  
 Noxious Weed Free 48  
 Pellets 48  
 Straw 48  
 Transit Certificate 48  
 Definitions, IDAPA 02.06.33  
 Agent 57  
 Certification 57  
 Department 57  
 Director 57  
 Educational Activity 57  
 Food Products 57  
 Handler 57  
 Livestock 57  
 Materials 57  
 Organic Certification Seal 57  
 Organic Food Product 57  
 Organically Grown Food Products 57  
 Person 57  
 Producer 57  
 Registration 57  
 Vendor 58  
 Definitions, IDAPA 07.07.01 113  
 Additional Definitions 114

- Administrator 113  
 Board 113  
 Division 114  
 Rules 114  
 Definitions, IDAPA 08.02.04  
   Authorized Chartering Entity 164  
   Board 164  
   Charter 164  
   Commission 164  
   Department 164  
   Founder 164  
   Petition 164  
   Petitioners 164  
   Public Charter School 164  
   Public Virtual School 164  
   School Year 164  
 Definitions, IDAPA 11.11.01 191  
   Act 191  
   Adult Probation & Parole  
     Officer 191  
   Agency 191  
   Agency Head 191  
   Applicant 191  
   Basic Adult Probation & Parole  
     Academy 191  
   Basic Correction Academy 191  
   Basic Detention Academy 191  
   Basic Juvenile Detention  
     Academy 191  
   Basic Juvenile Probation  
     Academy 191  
   Basic Patrol Academy 191  
   College Credit 191  
   Correction Officer 191  
   Correction Standards & Training  
     Council 191  
   Council 192  
   County Detention Officer 192  
   Crime of Deceit 192  
   Direction 192  
   Field Training 192  
   Full Time 192  
   High School 192  
   In-Service Training 193  
   Juvenile Detention Center 193  
   Juvenile Detention Officer 193  
   Juvenile Probation Officer 193  
   Juvenile Training Council 193  
   Law Enforcement Profession 193  
   Manual 193  
   Part Time 193  
   Part-Time Juvenile Detention  
     Officer 193  
   Peace Officer 193  
   POST 193  
   POST Basic Training Academy 193  
   Prosecutor 194  
   Qualified Instructor 194  
   Reserve Peace Officer 194  
   School 194  
   School Director or Coordinator 194  
   Specification 194  
   Supervision 194  
   Temporary 194  
   Trainee 194  
 Definitions, IDAPA 12.01.10 212  
   Act 212  
   Application 212  
   Closing 212  
   Director 212  
 Definitions, IDAPA 13.01.02 215  
   Accompanied 215  
 Definitions, IDAPA 13.01.04, Rules  
   Governing Licensing 223  
   Authorized Corporate  
     Representative 223  
   Blind Person 223  
   Direct Employee 223  
   Disabled 223  
   Domicile 223  
   Eligible Applicant 223  
   Eligible Property 224  
   Immediate Family Member 224  
   Landowner 224  
   Permanent Disability 224  
   Physician 224  
   Qualified Organization 224  
   Resident 224  
 Definitions, IDAPA 15.06.03 283  
   Interoperable Communications 283  
   Microwave Systems 284  
   Public Safety Communications 283  
   Wireless Communications 283  
 Definitions, IDAPA 16.04.02, Idaho  
   Telecommunication Service  
   Assistance Program Rules 429  
   Assistance Rate Discount 429  
   Community Action Agency 429  
   Department 429  
   Eligibility Application 429  
   Eligible Basic Local Service 429  
   Federal Poverty Guidelines  
     (FPG) 429  
   Head of Household 429  
   Household 429  
   Income 429  
   ITSAP 429  
   Lifeline 429  
   Provider 430  
   Recipient 430  
   Subscriber 430  
 Definitions, IDAPA 17.02.09 432  
   Ambulatory Payment Classification  
     (APC) 432  
   Ambulatory Surgery Center  
     (ASC) 432  
   Average Wholesale Price  
     (AWP) 432  
   Charge 432  
   Critical Access Hospital 432  
   Hospital 432  
   Implantable Hardware 432  
   Medical Service 432  
   Medicare Severity - Diagnosis  
     Related Group (MS-DRG) 432  
   Payor 432  
   Pharmacy 432  
   Physician 432  
   Provider 433  
   Rehabilitation Hospital 433  
 Definitions, IDAPA 22.01.02, Rules Of  
   The Board Of Medicine For The  
   Registration Of Externs, Interns, &  
   Residents 489  
   Acceptable International School of  
     Medicine 489  
   Acceptable Post Graduate Training  
     Program 489  
   Acceptable School of Medicine 489  
   Acceptable Training Program 489  
   Accreditation Council for Graduate  
     Medical Education  
     (ACGME) 489  
   Alternate Supervising Physician 489  
   Board 490  
   Educational Commission for Foreign  
     Medical Graduates  
     (ECFMG) 490  
   Extern or Student 490  
   Intern or Resident 490  
   Liaison Committee on Medical  
     Education (LCME) 490  
   Original Certificate or  
     Document 490  
   Person 490  
   Supervising Physician 490  
 Definitions, IDAPA 22.01.11 497  
   Act 497  
   Applicant 497  
   Board 497  
   Board of Registered  
     Polysomnographic  
     Technologists 497  
   Certified Pulmonary Function  
     Technologist (CPFT) 497  
   Certified Respiratory Therapist  
     (CRT) 497  
   Comprehensive Registry Exam 497  
   Conditional Permit 497  
   Entry Level Examination 497  
   Licensed Physician 498  
   Licensure 498  
   Licensure Board 498  
   Medical Practice Act 498  
   National Board of Respiratory Care,  
     Inc. 498  
   Performance of Respiratory  
     Care 498  
   Permit 498  
   Person 498  
   Polysomnographic Technician 498  
   Polysomnographic Trainee 498  
   Polysomnography 498  
   Polysomnography Related  
     Respiratory Care Services 499  
   Practice of Respiratory Care 499  
   Registered Polysomnographic  
     Technologist (RPSGT) 499  
   Registered Pulmonary Function  
     Technologist (RPFT) 499  
   Registered Respiratory Therapist  
     (RRT) 499

- Respiratory Care 499
- Respiratory Care Practitioner 500
- Respiratory Care Protocols 499
- Respiratory Therapist 500
- Respiratory Therapy 500
- Sleep Disorder Center or Laboratory 500
- Supervision of Respiratory Care 500
- Temporary Permit 500
- Written Registry & Clinical Simulation Examinations 500
- Definitions, IDAPA 23.01.01 530
  - Abandonment 530
  - Accreditation 530
  - Administration of Medications 530
  - Approval 530
  - Assist 530
  - Assistance With Medications 530
  - Board 530
  - Board Staff 530
  - Charge Nurse 530
  - Clinical Preceptor 530
  - Competence 530
  - Curriculum 530
  - Delegation 531
  - Disability 531
  - Emeritus License 531
  - License in Good Standing 531
  - Licensing Examination 531
  - Limited License 531
  - Nursing Assessment 531
  - Nursing Diagnosis 531
  - Nursing Intervention 531
  - Nursing Jurisdiction 531
  - Nursing Service Administrator 531
  - Organized Program of Study 531
  - Patient Education 531
  - Patient/Client 531
  - Plan of Care 531
  - Practice Standards 531
  - Probation 531
  - Protocols 531
  - Revocation 531
  - Scope of Practice 532
  - Supervision 532
  - Suspension 532
  - Technician/Technologist 532
  - Universal Standards 532
- Definitions, IDAPA 24.01.01 544
  - Board 544
  - Bureau 544
  - Direct Supervision 544
  - Responsible Control 544
- Definitions, IDAPA 24.14.01 570
  - Board 570
  - Bureau 570
  - Psychotherapy 570
  - Relative 570
  - Supportive Counseling 570
- Definitions, IDAPA 36.01.01 803
  - Answer 803
  - Appellant 803
  - Board 803
  - Case File 803
  - Comparable Sales 803
  - De Novo 804
  - Ex Parte 804
  - Intervenor 804
  - Parcel 804
  - Party 804
  - Presiding Officer or Hearing Officer 804
  - Respondent 804
  - Subject Property 804
  - Substantive Issue 804
- Definitions, IDAPA 37.03.03 827
  - Abandoned Well 827
  - Abandonment 827
  - Agricultural Runoff Waste 827
  - Applicant 827
  - Application 828
  - Aquifer 828
  - Area of Review 828
  - Beneficial Use 828
  - Best Management Practice (BMP) 828
  - Casing 828
  - Cementing 828
  - Cesspool 828
  - Coliform Bacteria 828
  - Confining Bed 828
  - Confining Zone 828
  - Construct 828
  - Contaminant 828
  - Contamination 828
  - Conventional Mine 829
  - Decommission 829
  - Deep Injection Well 829
  - Department 829
  - DEQ 829
  - Director 829
  - Disposal Well 829
  - Draft Permit 829
  - Drilling Fluid 829
  - Drywell 829
  - Emergency Permit 829
  - Endangerment 829
  - EPA 829
  - Exempted Aquifer 829
  - Existing Injection Well 829
  - Experimental Technology 830
  - Facility or Activity 830
  - Fault 830
  - Flow Rate 830
  - Fluid 830
  - Formation 830
  - Formation Fluid 830
  - Generator 830
  - Ground Water 830
  - Ground Water Quality Standards 830
  - Hazardous Waste 830
  - Improved Sinkhole 830
  - Indian Lands 830
  - Individual Subsurface Sewage Disposal System 830
  - Injection 830
  - Injection Well 831
  - Injection Zone 831
  - IWRB 831
  - Large Capacity Cesspools 831
  - Large Capacity Septic System 831
  - Lithology 831
  - Maintain 831
  - Mechanical Integrity 831
  - Modify 831
  - Motor Vehicle Waste Injection Wells 832
  - New Injection Well 832
  - Open-Loop Heat Pump Return Wells 832
  - Operate 832
  - Operator 832
  - Owner 832
  - Packer 832
  - Perched Aquifer 832
  - Permanent Decommission 832
  - Permit 832
  - Person 832
  - Plugging 832
  - Plugging Record 832
  - Point of Beneficial Use 832
  - Point of Diversion for Beneficial Use 832
  - Point of Injection 832
  - Pressure 833
  - Project 833
  - Radioactive Material 833
  - Radioactive Waste 833
  - RCRA 833
  - Remediation Project 833
  - Sanitary Waste 833
  - Schedule of Compliance 833
  - Septic System 833
  - Shallow Injection Well 833
  - Site 834
  - State 834
  - Stratum (plural strata) 834
  - Subsidence 834
  - Subsurface Fluid Distribution System 834
  - Surface Casing 834
  - Surface Runoff Water 834
  - Temporary Abandonment 834
  - Total Dissolved Solids 834
  - Transferor 834
  - UIC, Underground Injection Control 834
  - Unauthorized Decommission 834
  - Underground Injection 834
  - Underground Source of Drinking Water (USDW) 834
  - Unreasonable Contamination 835
  - Water Quality Standards 835
  - Well Monitoring 835
- Definitions, IDAPA 38.04.06 894
  - Camping 894
  - Capitol Annex 894
  - Capitol Mall Office Properties 894
  - Commemorative Installation 894
  - Department 894
  - Director 894

- Event 894
- Exhibit 894
- Multi-Agency Facilities 894
- Other State Properties 894
- Parking Facilities 894
- Private Event or Private Exhibit 895
- Public Use 895
- Security Personnel 895
- State Events & Exhibits 895
- State Facilities 895
- State Maintenance & Improvements 895
- Definitions, IDAPA 38.04.08 913
  - Camping 913
  - Commemorative Installation 913
  - Department 913
  - Director 913
  - Event 913
  - Exhibit 913
  - Jefferson Steps 913
  - Permit 913
  - Private Event or Private Exhibit 913
  - Public Use 913
  - Security Personnel 914
  - State Business Day 914
  - State Capitol Exterior 914
  - State Events & Exhibits 914
  - State Maintenance & Improvements 914
- Definitions, IDAPA 39.02.61 924
  - Exempt License Plate 925
  - Exempt Personalized License Plate 925
  - Undercover License Plate 925
- Definitions, IDAPA 39.03.42 933
  - Access 934
  - ADT, Average Daily Traffic 934
  - Applicant 934
  - Appraisal 934
  - Approach 934
  - Approach Flare 934
  - Approach Skew Angle 934
  - Approach Transition 934
  - Approach Width 934
  - Authorized Representative 934
  - Auxiliary Lane 934
  - Board 934
  - Border Area 934
  - Boulevard Approach 934
  - Capacity 935
  - Clear Zone 935
  - Commercial Approach 935
  - Conduit 935
  - Construction 935
  - Corner Clearance 935
  - Department 935
  - Distance Between Approaches 935
  - District 935
  - District Engineer 935
  - District Route 935
  - Economic Opportunity 935
  - Emergency 935
  - Encroachment 935
  - Encroachment Permit 935
- Farming 936
- FHWA, Federal Highway Administration 936
- Fiber Optic Cable 936
- Field Approach 936
- Flare Tangent Distance 936
- Frontage 936
- Frontage Boundary Line 936
- Frontage Road 936
- Full Control of Access 936
- Government Agency 936
- Highway Right-of-Way 936
- Interstate Highway 936
- Joint-Use Approach 936
- Landscaping 937
- Loaded Payroll Rate 937
- Local Highway Agency 937
- Local Road 937
- Median 937
- Median Opening 937
- MUTCD, Manual on Uniform Traffic Control Devices 937
- Non-Standard Approach 937
- Performance Bond 937
- Permittee 937
- Private Approach 938
- Property Line Clearance 938
- Public Approach 938
- Public Highway 938
- Public Highway Agency 938
- Regional Route 938
- Roadside 938
- Roadway 938
- Rural 938
- Setback 938
- Shall/Will, Should, May 934
- Shoulder 938
- Signal Spacing 938
- Slope 938
- Speed 938
- State Highway System 939
- Statewide Route 939
- Stopping Sight Distance 939
- Structure 939
- Subdivision 939
- Temporary Encroachment 939
- Traffic 939
- Traffic Control Device 939
- Traffic Impact Study 939
- Transitional 939
- Travel Lane 939
- Traveled Way 939
- Trenching 939
- Turnouts 939
- Unauthorized Encroachment 940
- Urban State Highway 940
- Utility Facility 940
- Utility Locating Service 940
- Vehicle 940
- Vision Triangle 940
- Volume 940
- Warrant 940
- Working Day 940
- Definitions, IDAPA 47.01.01 960
- Authorization to Purchase 960
- CFR, Code of Federal Regulations 960
- Customer 960
- Designated State Agency 960
- Designated State Unit 960
- IDVR, The Idaho Division of Vocational Rehabilitation 960
- IPE, Individualized Plan for Employment 960
- Method of Written Notification 961
- Most Significant Disability (MSD) 960
- PM, Policy Memorandum 961
- RSA, Rehabilitation Services Administration 961
- State Administrator 961
- VRC, Vocational Rehabilitation Counselor 961
- Denial Of License 537
  - Grounds for Denial of License 537
  - Notification of Denial 537
  - Reapplication for a License After Previous Denial 538
- Denial Or Refusal To Renew, Suspension Or Revocation Of Dietitians License 507
- Disciplinary Authority 507
- Grounds for Discipline 507
- Department Fee Structure 72
  - Cost of Supervision Fee 72
  - Hobby Craft Surcharge 72
  - Interstate Compact Application Fee 72
  - Maintenance/Room & Board Fee 72
  - Medical Co-pay Fee 72
  - Photo Copying Fee 72
  - Presentence Investigation Fee 72
- Department Visitors 73
  - Identification 73
  - Possessing Firearms & Other Deadly or Dangerous Weapons 73
  - Visitor Sign-In & Sign-Out 73
- Designated Motorized Hunting Rule Units 249
- Determination Of Authority 511
  - Outside Statutory Authority 511
  - Within Statutory Authority 511
- Development & Production Under The Lease 474
  - Amendments 475
  - Best Practices 474
  - Diligent Development of Lease & Production 474
  - Notice of Production 475
  - Plans Required 475
  - Waste & Damage 475
- Developmental Therapy 368
  - Coverage Requirements & Limitations 369
  - Excluded Services 372
  - Limitations on Developmental Therapy 372
  - Requirements to Deliver Develop-

- mental Therapy 369
  - Eligibility 368
  - Procedural Requirements
    - Assessment & Diagnostic Services 378
    - Comprehensive Developmental Assessments 379
    - DDA Program Documentation Requirements 382
    - DDA Program Implementation Plan Requirements 383
    - Requirements for Current Assessments 379
    - Specific Skill Assessments 382
  - Procedural Requirements For Individuals With An IPP 373
    - Documentation of Plan Changes 375
    - Eligibility Determination 373
    - Individual Program Plan (IPP) 374
    - Individual Program Plan (IPP) Definitions 374
    - Intake 374
  - Procedural Requirements For Individuals With An ISP 372
    - Documentation of Plan Changes 373
    - Eligibility Determination 372
    - Intake 372
  - Provider Qualifications & Duties 386
    - Developmental Specialist for Adults 387
    - Developmental Therapy Paraprofessionals 391
    - Requirements for Collaboration with Other Providers 391
  - Provider Reimbursement 393
  - Discipline 610
    - Administrative Fine 611
    - Licensee Costs 611
    - Refuse License 610
    - Restrict License 611
    - Revoke License 611
  - Disclosure Of Fees 589
    - Fee Changes 589
    - Payment 589
  - Disclosure Of Information
    - Government Agencies & Officials 799
    - Exchange of Information 800
    - Government Agencies or Officials 799
    - Legislature 799
  - Discovery 814
    - Reciprocity – Special Case 815
    - Sanctions 815
    - Scope & Method of Discovery
      - BOE Appeals 814
      - STC Appeals 815
    - Supplementation of Response 815
    - Written Permission 814
  - Distribution Of Funds 117
  - DME Outlet Standards 634
    - Policies & Procedures 634
    - Prescriber’s Order Required 634
    - Sale of Specified Prescription Drugs 634
  - Documentation For Newly Organized Or Altered Taxing Districts Or Revenue Allocation Areas (RAAs) Under The Jurisdiction Of Urban Renewal Agencies 761
    - Approval of Property Tax Levy or Revenue Allocation 763
    - Deadline for Completion 763
    - Definitions 761
    - Digital Map Information 763
    - Documentation to Be Filed for Disincorporated Cities or Dissolved Taxing Districts, or RAAs 762
    - Documentation to Be Filed for Newly Created or Altered Cities, Taxing Districts, or RAAs 762
    - Furnished By The State Tax Commission 764
    - Notification of Approval or Disapproval 763
    - One Uniform System 764
    - Tax Code Areas 764
  - Documentation Of Informed Consent 584
    - Education & Training 584
    - License Type and License Number, Credentials, & Certifications 584
    - Name, Business Address & Phone Number of Licensee or Intern 584
    - Relationship 584
    - The Extent and Limits of Confidentiality 585
    - Theoretical Orientation & Approach 584
  - Driving Business License 599
    - Applicant Identity 599
    - Certificate of Vehicle Insurance 599
    - Classroom Locations & Certificates of Occupancy 599
    - Course of Instruction 600
    - Criminal History Background Check 599
    - Instructor Apprenticeship Training Program 600
    - List of Licensed Instructors 599
    - On-line Instruction 600
    - Vehicles 600
  - Drug Outlet Licensure & Registration 674
    - Licenses and Registrations Nontransferable 675
    - New Drug Outlet Inspections 674
    - Reciprocity Nonresident Drug Outlet 675
  - Drug Product
    - Selection 643
    - Brand Name Drug Dispensing 643
  - Documentation 643
    - Substitution 663
    - Drug Shortage 663
    - Hospital 663
    - Skilled Nursing Facility 663
  - Drug Product Storage 646
- E**
- Early Periodic Screening, Diagnosis, & Treatment (EPSDT) Services
    - Definition 315
  - Educational Need, Work Experience
    - Determination of Educational Need 117
    - Purpose 117
  - Educational Program Standards 610
    - Clinical Work 610
    - Coursework Content & Hours 610
  - Eligible Applicants 683
    - City Applicants 683
    - County Applicants 683
    - Indian Tribes 683
    - Special Purpose Districts 683
  - Employment Of Unlicensed, Non-Exempt Individuals 589
  - Endorsements 132
  - Endorsements A - D
    - Agriculture Science & Technology (6-12) 132
    - American Government /Political Science (6-12) 133
    - Art (K-12 or 6-12) 133
    - Bilingual Education (K-12) 133
    - Biological Science (6-12) 133
    - Business Technology Education (6-12) 133
    - Chemistry (6-12) 133
    - Communication (6-12) 133
    - Drama (6-12) 133
    - Driver Education (6-12) 134
  - Endorsements E - L 134
    - Earth Science (6-12) 134
    - Economics (6-12) 134
    - English (6-12) 134
    - English as a New Language (ENL) (K-12) 134
    - Family & Consumer Sciences (6-12) 134
    - Geography (6-12) 135
    - Geology (6-12) 135
    - Gifted and Talented (K-12) 135
    - Health (6-12 or K-12) 135
    - History (6-12) 135
    - Humanities (6-12) 135
    - Journalism (6-12) 135
    - Library Media Specialist (K-12) 135
    - Literacy (K-12) 135
  - Endorsements M - Z
    - Marketing Technology Education (6-12) 136
    - Mathematics - Basic (6-12) 136
    - Mathematics (6-12) 136
    - Music (6-12 or K-12) 136



- Natural Science (6-12) 136  
 Physical Education (PE) (6-12 or K-12) 136  
 Physical Education/Health 136  
 Physical Science (6-12) 137  
 Physics (6-12) 136  
 Psychology 137  
 Social Studies (6-12) 137  
 Sociology (6-12) 137  
 Sociology/Anthropology (6-12) 137  
 Technology Education (6-12) 137  
 World Language (6-12 or K-12) 137  
 Enforcement 806  
 Enhanced Plan Benefits  
   Covered Services 357  
     Breast & Cervical Cancer Program 358  
     Dental Services 357  
     Developmental Disabilities Services 358  
     Enhanced Home Health Benefits 357  
     Enhanced Hospital Benefits 357  
     Enhanced Mental Health Benefits 357  
     Hospice 358  
     Long Term Care Services 358  
     Service Coordination Services 358  
     Therapies 357  
 Equidae 33  
   EIA Test Requirements 33  
   Equine Feeding Facilities 33  
   Reciprocal Agreements 33  
   Slaughter Horses 33  
   Working Horses Included on Grazing Permits 33  
 Equipment & Supplies 897, 915  
 Establishment Of Perimeters 897, 915  
 Event & Exhibit Duration 897, 915  
 Event Results & Medical Reporting 68  
 Ex Parte Communications 806  
   Permitted Ex Parte 806  
   Prohibited Ex Parte 806  
 Examinations, Endorsement, & Board Meetings 575  
   Board Meetings 575  
   Dates of Exams 576  
   Endorsement 576  
   Exam 575  
   Graduation Date to Qualify for Exam 576  
 Example, Calculation of Partial Exemption of Facilities for Water or Air Pollution Control 775  
 Exempt & Undercover Plate Fees 925  
   Adjusted Fees 926  
   Department Reimbursement 925  
 Exemption For Never Occupied Residential Improvements & Commercial, Industrial, & Residential Site Improvements 738  
   Forestland & Agricultural Use 740  
   Loss of the Exemption for Site Improvements 740  
   Non-Qualifying Residential Improvements 739  
   Qualifying Residential Improvements 738  
   Reporting & Deducting the Amount of the Exemption 740  
   Special Provisions for the Exemption for Site Improvements 739  
   Valuation of Land With Qualifying Exempt Site Improvements 740  
 Exemption From Drinking Water Source Designation 836  
   Criteria for Exempted Aquifers (40 CFR 146.4) 838  
   General 836  
   General Information to be Submitted with a Petition for Exemption 838  
   Identification of Underground Sources of Drinking Water & Exempted Aquifers. (40 CFR 144.7) 837  
   Petition Process for Aquifer Exemptions 836  
   Specific Information to be Submitted with a Petition for Exemption 839  
 Exemption from Participation 306  
 Exhibit 821  
   Copies 822  
   Custody 821  
   Form 822  
   Marking 822  
   Objection 822  
 Expedited Service Eligibility 292  
   Destitute 293  
   Income Less Than Rent & Utilities 293  
   Low Income & Resources 293  
 Exploration & Operation Records, Confidentiality 476  
   Continuing Obligations 477  
   Drilling Records 476  
   Well Logs 477  
 Exploration Under The Lease 473  
   Casual Exploration 473  
   Diligent Exploration 473  
   Plan Required 473  
 Exports 51  
 Extended Validity Equine Certificates  
   Cancellation 32  
   Contents 32  
   Period of Validity 32  
   Travel Itinerary 32  
   Valid for One Animal 32  
 Extensions Of Annual Farming Lease  
   Payment 462  
   Due Date 463  
   Farming Lease Extensions 462  
   Liens 462  
  

**F**

 Failure To Appear 818  
   Default or Dismissal 818  
   Setting Aside 818  
   Waiver of Appearance 818  
 Fair Hearing 817  
   Conference or Recess 817  
   Hearing Opportunity 817  
   Notice of Hearing -- Contents 817  
   Notice of Hearing -- Mailing 817  
   Purpose of Hearing 817  
   Setting of Hearing 817  
   Telephonic Hearing 817  
 Fair Hearing Process 962  
   Decision 963  
   Dispute 963  
   Fair Hearing Officers 963  
   Procedure 963  
   Timeline 963  
   Written Report 963  
   Written Request 963  
 Fee Schedule 624, 671  
   Additional Fees & Re-Inspection Fees 79  
   Administrative Services & Publications 626, 673  
   Certificates of Registration -- Professionals 624, 671  
   Certificates of Registration & Licensure - Facilities 624, 672  
   Controlled Substance Registration 626, 673  
   Existing Residential 78  
   Gray Water Systems 80  
   Licenses -- Professionals 624, 671  
   Mobile Home Parks & RV Parks 79  
   Mobile Homes 79  
   Multipurpose Residential Fire Sprinkler & Domestic Water Supply System Fee 80  
   New Residential - Multi-Family Dwellings 78  
   New Residential - Single Family Dwelling 78  
   Non-Residential 80  
   Nonresidential Sewer & Water Service Lines Permit Fees 80  
   Other Installations Including Industrial & Commercial 78  
   Plan Checking Fee 79  
   Reclaimed Water Systems 80  
   Requested Inspections 79  
   Residential 79  
   Sewer & Water Permit Fees 79  
   Technical Service Fee 80  
   Water Conditioners 79  
 Fees 65, 284, 492, 508, 563, 592, 604  
   Annual Fund Fee 563  
   Annual Renewal Fee 563, 592, 604  
   Annual Renewal Fee for Inactive License 592  
   Annual Renewal of Registration Fee 492  
   Application Fee 592, 604  
   Application Fees & Refunds 509  
   Application/License or Permit Fee 65  
   Certificate to Obtain & Use

- Pharmaceutical Agents Fee 563  
Duplicate License Fee 604  
Emergency Communication Services 285  
Examination Fee 604  
Examination/Reexamination Fee 592  
Extraordinary Expenses 509  
Fee Schedule for Services 284  
Fleet Communication Services 284  
Inactive Fee 509  
Inactive to Active License Fee 509  
Initial/Provisional Licensure & Examination Fee 508  
License Application Fee 563  
License by Endorsement Fee 604  
Original License Fee 592, 604  
Other 492  
Provisional Permit 592  
Refund of Fees 65, 592, 604  
Registration Fee 492  
Reinstatement Fee 508, 604  
Renewal Fee 508  
Fees - License Issuance, Renewal, Cancellation & Reinstatement 494  
Inactive License 494  
License Cancellation 494  
License Renewal Fee 494  
Licensure Fee 494  
Temporary Licensure Fee 495  
Volunteer License 495  
Female Combatants 66  
Addendum Requirement 66  
Annual Physical Examination 66  
Female Combatants Twelve & Under 66  
General Requirements 66  
Limitation 66  
Limitation on Contest 66  
Qualifications 66  
Separate Dressing Rooms 66  
Filing 812  
Document Filing Place 812  
Fax Filing 812  
Number of Copies 812  
Filing A Claim With  
Administrator 989  
Interest 989  
Payment of Claims - Claims Process 989  
Filing Of Documents - Number Of Copies 484  
Filing Of Documents -- Number Of Copies 489, 497, 507, 511  
Fires, Candles, & Flames 899, 908, 917  
Fish 34  
Food & Beverages 899, 908, 917  
Alcohol 899, 908, 917  
Consumption May Be Prohibited 899, 908, 917  
Form Of Pleadings 810  
Example 810  
Form 810  
Format For Submission Of Complaint 511
- G**
- General 941  
Access Control 941  
Maintenance of Encroachments 941  
Safety Requirements 941  
General Provisions 195, 969, 976  
Allocation of Revenues for Prizes 972, 978  
Applications 196  
Certificates & Awards 195  
Claims 972, 979  
Contingency Reserve 971, 978  
Convenience Fee 974  
Director 970, 977  
Disability of Prize Winner 973, 980  
Disputed Prizes 974, 980  
Effect of Game Rules 973, 980  
Eligibility 196  
Lottery Budgets & Financial Statements 970, 977  
Lottery Commission 969, 976  
Lottery Offices 970, 977  
Minimum Standards 196  
Open Meeting Law 970, 977  
Ownership of Lottery Tickets 972, 979  
Powers & Duties of the Commission 969, 976  
Powers & Duties of the Director 970, 977  
Prizes Payable After Death of Winner 973, 980  
Property 196  
Purpose 969, 976  
Retail Drawings 971, 978  
Retail Ticket Price Discounts 971, 978  
Sale of Lottery Tickets 974, 981  
Special Drawings 971, 978  
Stolen or Lost Tickets 973, 980  
Submission 196  
Time & Place of Meetings 970, 976  
Training 196  
General Provisions For  
Registration 491  
Character 491  
Disclosure 491  
No Action on Application 491  
Notification of Change 491  
Registration Certificate 491  
Termination of Registration 491  
General Qualifications For  
Licensure 484  
Applicants 485  
Application 484  
Character 484  
English Language 484  
Examination 485  
Health Care Standards 486  
Interview 485  
Residence 484  
General Regulations For  
Approaches 943  
Applicable Standards 943  
Approach Locations 943  
Denial of Approach Application 944  
General 943  
Joint-Use Approach 943  
Modification of Approaches by Department 945  
Modification of Approaches by Permittee 945  
New Approaches in Highway Construction 945  
Required 943  
General Reimbursement 317  
Individual Provider Payment 317  
Long-Term Care Facility Payment 317  
Participant Services 317  
Access 317  
Cost Survey 317  
Quality 317  
Review Reimbursement Rates 317  
Types Of Participant Services 318  
Adults with Developmental Disabilities Waiver Services 318  
Aged & Disabled Waiver Services 318  
Children's Waiver Services 318  
Payment for Enhanced Outpatient Mental Health Services 318  
Personal Care Services 318  
Psychosocial Rehabilitative Services (PSR) 318  
Service Coordination 318  
Therapy Services 318  
General Rules 446  
Annual Review & Consultation 447  
Compliance 446  
Consultation 447  
Conversion of Forest Lands 447  
Duty of Purchaser 448  
Emergency Forest Practices 448  
Notification Exception 448  
Notification of Forest Practice 447  
Regions Divided Into Forest Types 449  
State Divided into Regions 448  
General Rules For Taking Custody Of Unclaimed Property 988  
In General 988  
Reciprocity Agreements 988  
General Staffing Requirements 391  
General Staffing Requirements for Agencies 393  
Standards for Paraprofessionals Providing Developmental Therapy 391  
Governor's Wildlife Partnership  
Tags 220  
Application of Big Game Rules 220  
Eligibility 220  
License & Controlled Hunt Tag 221

Validity of Tag 221  
 Grocery Credit  
   Taxable Years Beginning After  
     December 31, 2007 715  
   Circumstances Causing  
     Ineligibility 716  
   Claiming the Credit 717  
   Donating the Credit 717  
   Illegal Residents 716  
   Members of the Uniformed  
     Services 716  
   Nonresidents 716  
   Part-Year Residents 716  
   Residents 716  
   Spouse or Dependents of Members  
     of the Uniformed Services 716  
 Guidelines For Approval Of Continuing  
 Education Credits 567  
 Board Assessment of Continuing  
 Education Activities 567  
 Continuing Education Credit 567  
 Credit for International, National &  
 Regional Meetings of  
 Psychological Organizations 567  
 Credit for Other Relevant  
 Workshops, Licensed Psychologist  
 Classes or Training  
 Experiences 567  
 On-Line Education 567  
 Presentation of Papers 567  
 Self-Study, Lectures or Public or  
 Professional Publications &  
 Presentations 567  
 Teleconferences 568

**H**

Health Questionnaire 313  
 Health, Safety & Maintenance Of State  
 Facilities 919  
   Clean Condition After Use 919  
   Fireworks 919  
   Items Return to Proper Location 919  
   Personal Safety & Firearms 919  
   Public Health 919  
 Health, Safety, & Maintenance Of State  
 Facilities 901  
   Clean Condition After Use 901  
   Fireworks 901  
   Items Return to Proper Location 901  
   Public Health 901  
 Healthy Connections  
   Coverage & Limitations 306  
     Change in Services That Require a  
       Referral 307  
     Exempted Services 306  
   Participant Eligibility 305  
     Exception from Participation 306  
     Primary Care Case Management  
       Enrollment 305  
   Procedural Requirements 307  
     Primary Care Case  
       Management 307  
     Problem Resolution 308  
   Provider Qualifications &

Duties 308  
 Provider Participation Conditions  
 & Restrictions 308  
 Provider Participation  
 Qualifications 308  
 Provider Reimbursement 309  
   Case Management Fee 309  
   Primary Care Case  
     Management 309  
   Quality Assurance 310  
 Healthy Connections & Idaho Medicaid  
 Health Home  
 Definitions 304  
   Best Practices Protocol 304  
   Care Plan 304  
   Chronic Disease  
     Management 304  
   Clinic 304  
   Covered Services 304  
   Grievance 304  
   Health Home 304  
   Health Information  
     Technology 304  
   Healthy Connections 304  
   Individual or Family  
     Supports 304  
   National Committee for Quality  
     Assurance (NCQA) 305  
   Preventive Care 305  
   Primary Care Case  
     Management 305  
   Primary Care Provider (PCP) 305  
   Qualified Medical  
     Professional 305  
   Quality Improvement  
     Program 305  
   Quality Measures 305  
   Referral 305  
   Risk Factor 305  
   Targeted Chronic Disease 305  
   Transitional Care 305  
 Hearing Before The Water Resource  
 Board 836  
 General 836  
 Hearings on Conditional Permits,  
 Disapproved Applications, or  
 Petitions for Exemption 836  
 Hearings on Permit  
 Cancellations 836  
 Higher Certification 199, 202  
   Education 199, 203  
   General Provisions 199, 202  
   Probationary Period 199, 203  
   Training Not Listed 199, 203  
 Hours & Locations Of Use 898, 907,  
 915  
   Capitol Annex 898, 907  
   Capitol Mall Office Properties &  
     Multi-Agency Facilities 907  
   Capitol Mall Office Properties & the  
     Multi-Agency Facilities 898  
   Hours 898, 916  
   Locations 916  
   Maintenance & Improvements 898

Parking Facilities 898, 908

**I**

ICF/ID  
 Principle Prospective Rates 426  
 Idaho Capital Gains Deduction --  
 Qualified Property 688  
 Gain from Forfeited Rights &  
 Payments 689  
 Holding Periods 689  
 Holding Periods of S Corporation &  
 Partnership Property 690  
 Nonqualifying Property 689  
 Property Distributed by an S  
 Corporation or Partnership 690  
 Real Property 688  
 Tangible Personal Property 688  
 Timber 689  
 Idaho Educator Credential 131  
 Out-of-State Applicants 132  
 Renewal Requirement -  
   Comprehensive Literacy 132  
 Renewal Requirement - Mathematics  
 In-Service Program 131  
 Idaho Investment Tax Credit  
 Credit Earned On Property Used Both  
 In & Outside Idaho In Taxable  
 Years Beginning On Or After  
 January 1, 1995 693  
 Election of Methods 693  
 Examples 693  
 In General 693  
 Order of Limitations 693  
 In General 708  
   Bonus Depreciation 709  
   Carryovers 709  
   Credit Allowed 708  
   Expensed Property 709  
   Limitations 708  
   Motor Vehicle 709  
 Property Tax Exemption In Lieu  
 Of 709  
   In General 709  
   Negative Idaho Taxable Income in  
     Second Preceding Taxable  
     Year 710  
   Terms 709  
   Used Property Limitation 711  
 Idaho Medicaid Health Home  
 Coverage & Limitations 311  
   Care Coordination & Health  
     Promotion 311  
   Comprehensive Care  
     Management 311  
   Comprehensive Transitional  
     Care 311  
   Individual, Family, Community, &  
     Social Support Services 311  
 Definitions 310  
 Participant Eligibility 310  
 Eligibility 310  
 Eligibility Determination 311  
 Procedural Requirements 311  
 Data Reporting 311

- Provider Agreement 311
  - Quality Improvement Program 311
  - Provider Qualifications & Duties 311
  - Provider Duties 312
  - Provider Infrastructure & Health Home Assessment 312
  - Qualifications 312
  - Quality Assurance 313
  - Idaho Organic Certification Seal 58
    - Description of Seal 58
    - Utilization of Seal 58
  - Identification Of Animals That Legally May Be Taken 279
  - Identification Of Sex, Size, And/Or Species In Possession & During Transportation Or Shipment 279
  - Identification Of Species In Possession/ During Transportation/ Shipment 264
    - All Other Game Birds & Eurasian-Collared Doves 264
    - Wild Turkey 264
  - Imminent Threat 936
  - Inactive Status 575, 587, 592
    - Definition of Inactive Status 587
    - Inactive License Status 575, 592
    - Request for Inactive Status 575, 592
    - Return to Active Status 587
    - Waiving Continuing Education Requirements - Inactive Status 587
  - Incorporation By Reference 212, 960
    - Availability of Documents 212
    - Availability of Reference Material 960
    - Documents Incorporated by Reference 960
    - General 960
    - NMLS Policy Guidebook 212
    - Regulation X 212
    - Regulation Z 212
    - The Real Estate Settlement Procedures Act 212
    - The Truth in Lending Act 212
  - Infested Seed Stock, Hold Order 40
  - Informal Disposition -- Settlement 818
    - Burden of Proof 819
    - Confidentiality 818
    - Consideration of Settlement 819
    - Formalizing Agreements 818
    - Settlement Inquiry 819
    - Settlement Not Binding 819
  - Informal Review Process 961
    - Advising the Customer 961
    - Communication Method 962
    - Conducting the Review 961
    - Documented Effort 961
    - Review Location 962
    - Transportation 962
    - Written Proposal 962
  - Information To Be Provided By An Authorized Agency 925
    - Actual Name & Address 925
    - Authorized Official 925
    - Fictitious Name & Address 925
    - Vehicle Description 925
  - Initial Pleading - Listing Of Representatives 805
  - Inspection & Sanitary Rules 549
    - Classification of Shops & Schools 550
    - Dispensers 549
    - Floors, Walls & Ceilings 549
    - Instrument Cleaning 549
    - Instrument Sanitation 549
    - Licenses & Certificates 550
    - Premises 549
    - Safety 550
    - Storage of Equipment 549
    - Toilet Facilities 550
    - Towels 549
    - Uniforms 549
    - Water Supply 550
  - Installation Permit Fees 105
    - Double Section Unit 105
    - Electrical & Plumbing Permits 105
    - More Than Two Sections 105
    - Single Section Unit 105
  - Installation Permits & Inspections Required 105
  - Installation Tags Required 105
  - Institutional Facility
    - Centralized Pharmacy Services 678
      - Limited Purpose 678
      - Policies & Procedures 678
    - Emergency Drug Access & Pharmacist Absence 632
    - Emergency Cabinets 633
    - Emergency Drug Access Conditions & Documentation 633
    - Emergency Pharmacy Access 632
    - Temporary Pharmacist Absence 633
  - Emergency Drug Supply Preparation & Monitoring 659
    - Access Documentation 659
    - Content Labeling 659
    - Drug Expiration Monitoring 659
    - Prepackaged Amounts 659
    - Regular Inventory & Inspection 659
  - Emergency Outpatient Drug Delivery By Hospital Emergency Rooms 651
    - Documentation 651
    - Labeling 652
    - Limitations 651
    - Prerequisites 651
    - R.N. Staff Personnel Only 652
  - Offsite Pharmacy Practice Standards 634
    - Offsite Pharmacy Services 634
    - Written Agreement 634
  - Offsite Services -- First Dose Pharmacy 677
  - Drug or Chart Orders 677
- Institutional Facility
  - Approval 677
  - Limited Purpose 677
  - Written Contract 677
- Institutional Participation 116
  - Annual Application 117
  - Enrollment Form 117
- Institutional Pharmacy Director
  - Minimum Responsibilities 650
    - Continuous Quality Improvement Program 651
    - Director Change 651
    - Drug Use, Storage, & Accountability 650
    - Emergency Drug Access Protocol 651
    - Formulary or Drug List Development 650
    - Policies & Procedures 650
    - Product Procurement 650
    - Records Maintenance 651
    - Suspected Adverse Drug Reaction Reporting 651
    - Teaching, Research, & Patient Care Evaluation Programs 651
- Instructor Rules 548
  - Record of Instruction 549
  - Records Required 548
  - Requirements for Instructor License 548
- Interest Rates 797
- Idaho Interest Rates & Applicable Revenue Rulings 797
- In General 797
- Intermediate Certificate 199, 203
  - Basic Certificate 199, 203
  - College Credits, Training Hours, & Experience 199, 203
  - Requirements 199, 203
- Interpretations 546
  - Contracts 546
  - Professional Standards 546
  - Reference to Building 546
- Intervention 815
  - Intervention of Right 815
  - Permissive Intervention 816
- Issuing Agency 925
- Items Subject To Search 900, 909, 918
  - Items 900, 909, 918
  - Packages & Bags 900, 909, 918
- J**
- Juvenile Detention Officer
    - Certification 197
    - Applications 198
    - Certification 198
    - Decertification 197
    - Minimum Standards 198
    - Submission 198
  - Juvenile Probation Officer
    - Certification 202
    - Applications 202

- Certification 202  
 Decertification 202  
 Minimum Standards 202  
 Retaining Certification 202  
 Submission 202
- L**
- Land Surface Use Rights &  
 Obligations 472  
 Damage 473  
 Disposal of Leased Land 473  
 Distance from Residence 473  
 Supervision 472  
 Use & Occupancy 472
- Landowner Appreciation Program 224  
 Application of Controlled Hunt  
 Restrictions 226  
 Applications for Landowner  
 Appreciation Controlled Hunt  
 Tags 224  
 Eligible Applicants 224  
 Hunt Units 224  
 Issuance of Controlled Hunt  
 Tag(s) 225  
 Left Over Tags 225  
 Prohibitions 226  
 Property & Applicant  
 Registration 225  
 Qualifying Property 224  
 Special Restrictions 226
- Landscaping 899, 917  
 Climbing 899, 917  
 Grass 899, 917  
 Irrigation Equipment 899, 917  
 Landscaping Materials 899, 917  
 Plants 899, 917
- Lapse Of Adult Probation & Parole  
 Officer Certification 207  
 Over Eight Years 208  
 Over Five Years 208  
 Three to Five Years 208
- Lapse Of Correction Officer  
 Certification 206  
 Over Eight Years 207  
 Over Five Years 207  
 Three to Five Years 207
- Lapse Of Juvenile Detention Officer  
 Certification 200  
 Exceptions 200  
 Over Eight Years 200  
 Over Five Years 200  
 Three to Five Years 200
- Lapse Of Juvenile Probation Officer  
 Certification 203  
 Over Eight Years 204  
 Over Five Years 204  
 Three to Five Years 203
- Law Enforcement & Facility  
 Exigency 900, 909, 919
- Lease Cancellation 462  
 Change in Land Use 462  
 Land Sale 462  
 Mutual Agreement 462  
 Non-Compliance 462
- Length Of Lease 461  
 Liability (Indemnity) 465  
 Liability & Indemnification 901, 922  
 Indemnification 901, 922  
 No Endorsement 901, 922  
 State Liability 901, 922  
 User Retains Liability 901, 922
- License & Registration  
 Inspection 641  
 Application Pending 642  
 Temporary Locations 642  
 Reinstatement 623  
 Additional Requirements 624  
 Satisfactory Evidence 624
- License Suspension Or  
 Revocation 107
- Licensure By Equivalency &  
 Endorsement Licensure 541  
 Applicants Licensed in Another  
 Nursing Jurisdiction 541  
 Application by Equivalency 541  
 Application For Licensure By  
 Endorsement 541  
 Application Form 541  
 Census Questionnaire 542  
 Criminal Background Check 542  
 Employment Reference 541  
 Licensing Examination 541  
 Verification 541
- Limitations On New Public Charter  
 Schools 164  
 Authorization to Begin Educational  
 Instruction 165  
 Notification 165  
 Responsibilities of Petitioners on  
 Approval of Charter 165
- Limits On Bingo Operation's Prize  
 Payout Ratios & Administrative  
 Expenses 967  
 Applicability 967  
 Donated Cash Funds Prohibited 967  
 Donated Merchandise 967
- Limits On Use Of Common Space 908  
 Attaching, Affixing, Leaning or  
 Propping Materials 908  
 Electrical Cords 908  
 Ingress or Egress 908  
 Materials Causing Damage to Interior  
 Surface 908  
 Railings & Stairways 908  
 Tossing or Dropping Items 908
- List Of Moving Traffic Convictions  
 And/Or Violations Point Count  
 928
- Local District Evaluation Policy -  
 Administrative Certificate  
 Holders 144  
 Evaluation Policy - Content 145  
 Evaluation Policy - Frequency of  
 Evaluation 146  
 Evaluation Policy - Personnel  
 Records 146  
 Evaluation System Approval 147  
 Parent Input 145  
 Standards 144  
 Student Achievement 145
- Local District Evaluation Policy -  
 Teacher & Pupil Personnel  
 Certificate Holders 141  
 Evaluation Policy - Content 143  
 Evaluation Policy - Frequency of  
 Evaluation 144  
 Evaluation Policy - Personnel  
 Records 144  
 Evaluation System Approval 144  
 Parent Input 142  
 Participants 142  
 Standards 141  
 Student Achievement 142
- Location & Design Standards For  
 Approaches 945  
 Approach Alignment 949  
 Base & Surfacing 951  
 Border Area 951  
 Corner Clearance 949  
 Drainage 951  
 Figure 1  
 948  
 Grade 951  
 Guidelines 945  
 Property Line Clearance 950  
 Required 945  
 Setback 950  
 Sight Distance 950  
 Signal & Approach Spacing 946  
 Transitions & Flares 951  
 Width & Radius 949
- Location & Design Standards For Other  
 Encroachments 953  
 Approved Permit Required 954  
 Benches, Planters, & Other Urban  
 Structures 954  
 Landscaping, Farming & Associated  
 Irrigation 954  
 Mailbox Turnouts 955  
 Overhanging Displays, Canopies &  
 Marquees 954  
 Recreational Parking & Park-&-Ride  
 Lots 955  
 School Bus Turnouts 955
- Location & Design Standards For  
 Utilities 952  
 Approved Permit Required 952  
 Conduits Attached to Structure 953  
 Conduits Under the Roadway 952  
 Interstate Highways 952  
 Utility Locations 952  
 Utility Maintenance & Emergency  
 Repair 952
- M**
- Maintenance Of Interior State  
 Facilities 909  
 Clean Condition After Use 909  
 Items Return to Proper Location 909
- Management Plans 463  
 Federal Plan 463  
 Modification of Plan 463

- Mandatory Check & Report  
Requirements 278  
Harvest Report & Presentation of  
Animal Parts 279  
Trapping Report Completion 279  
Wolf Telephone Report 279  
Mandatory Wolf Trapper Education  
Class 279  
Manufacturer Registration 676  
Marriage & Family Therapists 581  
Examination 582  
Graduate Degree 581  
Practicum 581  
Supervised Marriage & Family  
Therapy Experience 581  
Martial Arts & Mixed Martial Arts  
(MMA) 68  
Boxing Gloves 68  
Licensing Exemption 68  
Practices, Belt Promotions, & Non-  
Contact Demonstrations 68  
Regulation of Marital Arts &  
MMA 68  
Use of Official Rules for Art 68  
Materials 57  
Mediation 962  
Confidentiality 962  
Cost 962  
Fair Housing 962  
Mediation Agreement 962  
Mediator 962  
Participation 962  
Time Line 962  
Written Request 962  
Medical Expenses 293  
Artificial Devices 293  
Attendant Care 294  
Attendant Meals 294  
Cost-Sharing or Spend-Down  
Expenses 293  
Eyeglasses 293  
Health Insurance 293  
Hospital or Outpatient  
Treatment 293  
Medical & Dental Services 293  
Medical Supplies & Sickroom  
Equipment 293  
Medicare Premiums 293  
Prescription Drugs 293  
Psychotherapy & Rehabilitation  
Services 293  
Service Animal 293  
Transportation & Lodging 294  
Meeting Of The Board 557  
Mentored Hunting Program 215  
Eligibility of Mentee 216  
Eligibility of Mentor 216  
Hunting Passport 215  
Method Of Application-Examination Of  
Applicants 558  
Application 558  
Application Review 558  
Exam Content 558  
Methods Of Take 271  
Furbearing Animals 271  
Hunting 271  
Trapping 271  
Minimum Scope Of Installation  
Inspection 107  
Inspection Minimum  
Requirements 107  
Scope 107  
Minimum Standards For Employment  
For Correction Officers  
Physical - Medical  
Procedures 206  
Requirements 206  
Minimum Training Requirements For  
Inspectors 106  
Annual Training or Instruction 106  
Division Approval 106  
Revocation of Approval 106  
Miscellaneous 176  
Criteria 177  
Definition of LEA 176  
LEA Designations 176  
Referral to the Board 177  
Review 177  
Timeframe for LEA Request 177  
Miscellaneous Requirements 545  
Corporations 545  
Firm Names 545  
Practice of Architecture 545  
Misdemeanor Probation Officer  
Certification 209  
Applications 210  
Certification 210  
Decertification 209  
Eligibility 210  
From Full-Time to Part-Time  
Status 210  
From Part-Time to Full-Time  
Status 210  
Limitation of Part-Time  
Officers 210  
Minimum Standards 210  
Submission 210  
MMA Equipment 68  
Commission Approved Attire 69  
Commission Approved MMA  
Gloves 69  
Commission Approved  
Mouthpiece 68  
Prohibited Equipment & Attire 69  
Money-Operated Dispensing  
Equipment 729  
Parts, Kits, or Supplies 729  
Motions 813  
Answers to Motions 813  
Form & Contents 813  
Oral Argument 813  
Prehearing Motions 813  
Motor Vehicles & Trailers Used In  
Interstate Commerce 729  
Documentation 729  
Failure To Meet Interstate Mileage  
Requirement 730  
In General 729  
Motor Vehicles 729  
Repair Parts & Supplies 730  
Title or Base Plate 729  
Trailers 729  
Motorized Hunting Rule 248  
Motorized Vehicle Use Restrictions  
Defined Terms 248  
Exceptions 248  
Use Restriction 248  
Motorized Vehicles 898, 916  
Movement Of Cervidae Between AZA  
& USDA Facilities 34  
Multi-Agency Facilities 896, 907  
Idaho Falls State Office  
Building 896, 907  
Lewiston State Office Building 896,  
907  
Multistate Licensure 534  
Definitions 534  
Examination 535  
Information System 536  
Issuance of License in Compact Party  
State 535  
Multistate Licensure Privilege  
Limitations 536  
**N**  
Nonresident & Part-Year Resident  
Individuals -- Additions Required In  
Computing Idaho Adjusted  
Income 705  
Capital Loss 706  
Certain Expenses of Eligible  
Educators 706  
Idaho College Savings Program 706  
Idaho Medical Savings Account 706  
Interest & Dividends Not Taxable  
Pursuant to the Internal Revenue  
Code 705  
Lump Sum Distributions 706  
Net Operating Loss Deduction 706  
Special First-Year Depreciation  
Allowance 706  
Nonresident Central Drug Outlet & Mail  
Service Pharmacy Registration 675  
Executive Summary 675  
PIC or Director 675  
Nonresident Deer & Elk Tag  
Quotas 219  
Exceptions 219  
Refunds 219  
Sale of Unsold Nonresident Deer &  
Elk Tags to Residents 220  
Tag Quotas 219  
North American Noxious Weed  
List 52  
Notice Of Appeal  
BOE Appeals 807  
BOE Appeal 807  
Filing Place 807  
Separate Notice 807  
Contents 806  
Additional Contents 807  
Appeal Filed by an Attorney or

- Representative 807  
 Basic Contents 806  
 Change in Address or Phone Number 807  
 STC Appeals 808  
   Amount in Dispute 808  
   Attachment 808  
   Basis 808  
   Objections 808  
   Security Deposit 808  
 Noxious Weed Control 465  
   Responsibility 465  
   Weed Control 465  
 Nursing Facility  
   Behavioral Care Unit (BCU) & Rate Structure 420  
     Administrative & Staffing Requirements 422  
     Annual Rates Beginning July 1, 2013 421  
     BCU Annual Renewal 422  
     BCU Routine Customary Charge 420  
     Behavior Management Team Meetings 422  
     Care Planning, Behavioral Management, & Programming 422  
     Determination 420  
     Discharge Criteria 423  
     Participant Characteristics 421  
     Prospective Rate Setting 420  
     Rates Effective October 1, 2012 420  
     Refusal of Admissions 423  
     Staff Training 422  
     Termination of BCU Status 423  
     Yearly Training 422  
   Cost Limits Based On Cost Report 419  
     Costs Exempt From Limitations 420  
     Direct Cost Limits 419  
     Indirect Cost Limits 420  
     Limitation on Increase or Decrease of Cost Limits 420  
     Percentage Above Bed-Weighted Median 419  
   Development Of The Rate 418  
     Applicable Case Mix Index (CMI) 418  
     Applicable Cost Data 418  
     Costs Exempt From Limitation 419  
     Direct Care Cost Component 418  
     Indirect Care Cost Component 419  
     Interim Rates 418  
     Property Reimbursement 419  
     Revenue Offset 419  
   Existing Provider Elects To Add Behavioral Care Unit (BCU) 424  
     BCU Payments 424  
     Meet Criteria for BCU 424  
     Qualifying Cost Report 424  
   New Behavioral Care Unit (BCU) 423  
     Criteria to Qualify as a New BCU 423  
     First Cost Reporting Year 424  
     Qualifying Report in Tandem with BCU Eligibility 424  
   New Owner Of An Existing Nursing Facility With A Behavioral Care Unit (BCU) 424  
     New Owner Does Not Elect to Continue BCU 424  
     New Owner Elects to Continue BCU 424  
   Special Rates 424  
     Determination 424  
     Determination of Payment for Qualifying Residents 425  
     Effective Date 424  
     Limitation 425  
     Prospective Rate Treatment 425  
     Reporting 425  
     Special Rate for Providers that Change Ownership or Close 426  
     Treatment of the Special Rate Cost for Future Rate Setting Periods 426  
   Official Notice 820  
   Official Record 823  
     Content 823  
     Cost 824  
     Verbatim Record 824  
   On-Line Computer Games 981  
     Definitions 981  
     Discharge of State Lottery Upon Payment 986  
     Disclosure 986  
     Distribution of Tickets 981  
     Drawings & End of Sales Prior to Drawings 982  
     On-Line Games -- Authorized -- Director's Authority 981  
     On-Line Games Criteria 982  
     Payment of Prizes 982  
     Payment of Prizes by On-Line Retailers 985  
     Payment of Prizes to Persons Under Eighteen Years of Age 985  
     Prize Rights Unassignable 985  
     Prizes Payable After Death or Disability of Owner 986  
     Retailer Duties 984  
     Retailer Settlement 985  
     Sale of Tickets 981  
     Validation Requirements 983  
   Open Meetings 603  
   Operating Statement--Contents 766  
     Cross Reference 767  
     Filing Date for Operator's Statement 767  
     Operator's Statement 766  
   Record of Property Ownership 766  
   Reporting of Mileage 766  
   Situs Property 766  
   Tax Code Area Maps 766  
   Order Of Selection 964  
     Priority Number 1 964  
     Priority Number 2 964  
     Priority Number 3 964  
     Priority Number 4 964  
   Organization 804  
     Election 804  
     Power 804  
   Organization And Operations Of The Board 603  
     Meetings 603  
     Organization 603  
   Other Indicators For Investigation 514  
     Board Investigations 514  
     Performance Indicators 514  
   Other State Properties 895, 906  
     Idaho State Historical Society Properties 895, 906  
   Out-of-State Mail Service Pharmacy 652  
   Outpatient Hospital Services  
     Procedural Requirements 303  
     Follow-Up for Emergency Room Patients with Chronic Conditions 304  
     Review Prior to Delivery of Outpatient Services 303  
   **P**  
   Parenteral Admixture Labeling 644  
     Date & Time 644  
     Identification 644  
     Ingredient Information 644  
     Prescribed Administration Regimen 644  
     Special Instructions 645  
   Participation By Taxing Authority 806  
   Part-Time Juvenile Detention Officer Certification  
     Certification 198  
     Eligibility 199  
     Limitation 199  
     Minimum Standards 198  
     Supervision 199  
   Patients Records 563  
     Optometrist Shall Keep a Complete Record of All Patients Examined 563  
     Prescription Files 563  
     Storage of Patient Records 563  
   Permits 919  
     Application Period 919  
     Application Requirements 919  
     Conditions 920  
     Distribution 919  
     Fees & Costs 920  
     Permit Areas, Hours & Duration 919  
     Transferability 920  
     Use Without a Permit 919

- Validity 919
- Personal Care Services
  - Provider Reimbursement 319
    - Attending Physician Reimbursement Level 320
    - Calculated Fee 319
    - Payment for PCS Family Alternate Care Home 320
    - Payment for Personal Assistance Agency 319
    - Payment Levels for Adults in Residential Care or Assisted Living Facilities or Certified Family Homes 319
    - Reimbursement Rate 319
    - Supervisory RN & QMRP Reimbursement Level 320
    - Weighted Average Hourly Rate Methodology 319
  - Persons Exempted By Board 533
    - Employer Application 534
    - Family Members & Others 533
    - Non-Resident Nurses 533
    - Nurse Apprentice 533
    - Technicians & Technologists 533
  - Persons Exempted From Advanced Practice Registered Nursing License Requirements 524
    - Advanced Practice Registered Nurses Educated Prior to January 1, 2016 524
    - Certified Nurse Practitioners Licensed Prior to July 1, 1998 524
    - Students 524
  - Petition -- Format 181
    - Appendices 184
    - Cover Page 181
    - Tab 1 182
    - Tab 10 184
    - Tab 2 182
    - Tab 3 182
    - Tab 4 182
    - Tab 5 182
    - Tab 6 183
    - Tab 7 183
    - Tab 8 184
    - Tab 9 184
    - Table of Contents 182
  - Petition -- Submission
    - Administratively Complete 179
    - Case Number 179
    - Considered Received 179
    - Number of Copies 179
    - School District Comments 179
    - Sufficiency Review 179
    - Supplemental Information 179
  - Pharmacist
    - Administered Immunizations 630
      - Emergencies 631
      - Maintaining Qualification 630
      - Patient Eligibility 630
      - Pharmacist Qualifications 630
      - Recordkeeping 631
      - Required Reports 631
    - Required Resources 631
      - Student Pharmacist Administration 630
      - Vaccine Information Statements 631
      - Waste Disposal 631
    - Independent Practice 676
      - Access to Relevant Information 676
      - Information Protected from Unauthorized Use 676
      - Records Maintained in Electronic Recordkeeping System 676
    - Pharmacist Inactive Status License 626
      - Exemptions & Restrictions 626
      - Required Criteria 626
      - Return to Active Status 626
    - Pharmacist License Or Registration 673
      - Practice in Idaho 674
      - Practice Into Idaho 674
    - Pharmacist Licensure By Examination Foreign Pharmacy Graduates 642
      - Affidavit 642
      - Licensure Submission Requirements 642
    - Pharmacist Registration To Practice Pharmacy Into Idaho 674
      - Attestation 674
      - Facility License Information 674
      - Individual License Information 674
    - Pharmacy Change Of Ownership Or Permanent Closing 649
      - Board Notification 649
      - Pharmacy Change of Ownership 650
      - Pharmacy Signs 649
      - Public Notice 649
      - Transfer or Other Disposition of Drugs & Prescription Files 649
    - Pharmacy Notification & Advertising Of Hours Open For Business 649
      - Notification of Business Hours 649
      - Notification of Change of Business Hours 649
    - Pharmacy Registrant & PIC Or Director 647
      - Corresponding & Individual Responsibility 647
      - Designated PIC or Director Required 647
    - Pharmacy Security 648
      - Basic Security Standards 648
      - Non-Institutional Pharmacy Security During Pharmacist Absence 648
      - Restricted Access to the Pharmacy 649
      - Structural Security Requirements 648
    - Pharmacy Space & Fixtures 632
      - Additional Retail Pharmacy Requirements 632
      - Equipment & Fixture Standards 632
    - Preparation Area Standards 632
    - Pharmacy Technical Equipment 648
      - PHI Transmission Equipment Location 648
      - Separate Telephone 648
      - Technical Equipment 648
    - Pharmacy Technician Certification Continuous Employment Exemption 643
    - Pheasant Seasons, Bag & Possession Limits 266
      - WMA Upland Game Permit 266
      - Youth Pheasant Season 267
    - Physical - Medical 206
      - Procedures 195
      - Requirements 194
    - Physical Examination Of Combatant 65
      - Additional Examination 65
      - Blood Testing 65
      - Drug Abuse 65
      - Examination by Physician 65
      - Male Combatant Age Twelve & Under 65
    - Physician Panelist For Prelitigation Consideration Of Medical Malpractice Claims 486
      - Eligibility 486
      - Excusing Physicians from Serving 487
      - Penalties for Noncompliance 487
      - Purpose 486
    - PIC Or Director 676
      - Corresponding & Individual Responsibility 676
      - Designated PIC or Director Required 676
    - Placement Of Hunting Camps & Leaving Outfitter's Operating Area, Big Game Hunting & Incidental Trapping 618
      - Camps 619
      - Guide Services to Clients Outside Outfitter's Operating Area 619
      - Hot Pursuit of Bear & Cougar With Hounds & Hot Pursuit Agreements 618
      - Wolf Trapping Incidental to Big Game Hunts 619
    - Policies & Procedures Adopted By An Authorized Chartering Entity 166
      - Application Deadline 166
      - Charter School Policies & Procedures 166
    - Posters, Placards, Banners, Signs, Equipment, Tables, Materials, & Displays 899, 917
      - Attaching, Affixing, Leaning or Propping Materials 918
      - Attaching, Affixing, Leaning, or Propping Materials 900
      - Electrical Cords 899, 917
      - Free Distribution of Literature & Printed Material 900, 918



- Ingress or Egress 900, 918
  - Materials Causing Damage to
    - Exterior Surface 900
  - Materials Causing Damage to Surfaces 918
  - Railings 917
  - Railings & Stairways 899
  - Tossing or Dropping Items 899, 917
  - Practice Of Social Work 570
    - Baccalaureate Social Work 570
    - Clinical Social Work 570
    - Employment of a Social Worker 571
    - Independent Practice of Social Work 571
    - Master's Social Work 570
    - Private Practice of Social Work 571
  - Prehearing Conference 812
    - Determination Upon Results of Conference 813
    - Failure to Appear 813
    - Notice of Prehearing Conference 813
    - Prehearing Order 813
    - Subject of Conference 812
  - Prescription Delivery Restrictions 647
  - Prescription Drug Order Transfers 628
    - Communicating Prescription Drug Order Transfers 628
    - Documentation Required of the Receiving Pharmacy 628
    - Documentation Required of the Transferring Pharmacy 628
    - Electronic Prescription Drug Order Transfers 629
    - Pharmacies Using Common Electronic Files 629
    - Transferring Prescription Drug Order Refills 629
    - Transferring Prescription Drug Orders for Controlled Substances 629
  - Validity 627
    - Antedating or Postdating 627
    - Family Members 628
    - Invalid Prescription Drug Orders 627
    - Prescriber Self-Use 628
    - Tampering 627
  - Prescriptions For Spectacles & Contact Lenses 562
    - All Prescriptions for Rigid Contact Lenses 562
    - All Prescriptions for Soft Contact Lenses 562
    - Alteration of Prescriptions 562
    - Expired Contact Lens Prescription 562
    - Fitting & Dispensing Contact Lenses 562
    - Prescription for Spectacles 562
  - Prescriptive & Dispensing Authorization For Advanced Practice Registered Nurses 524
  - Expiration of Temporary Prescriptive Authorization 526
  - Initial Authorization 525
  - Prescribing & Dispensing Authorization 526
  - Temporary Authorization 526
  - Presiding Officer 819
    - Certification by Board 819
    - Depositions 819
    - Hearing 819
    - Motions 819
    - Oath or Affirmation 819
    - Official Record 819
    - Other Action 819
  - Prevention Services 310, 313
  - Primary Care Case Management 304
  - Private Applicator Licensing 26
    - Applying for a Private Applicator's License 26
    - License Categories 26
    - License Recertification 26
  - Procedure & Testimony 819
    - Examination of Witness 820
    - Order of Procedure 819
    - Preliminary Procedure 819
    - Presentation of Evidence 820
    - Testimony 819
  - Procedure For Formation Of A New Public Charter School 165
    - Assistance With Petitions 165
    - Petition Sufficiency Reviews 165
    - Public Charter School Workshops 165
  - Procedure Governed 804
    - Procedure 804
    - Purpose 805
  - Proceedings On Levy Or Dstraint 797
    - In General 797
    - Sale of Property 797
  - Prohibited Items 900, 909, 918
  - Property Exempt From Taxation 749
    - Burden of Proof 749
    - Confidentiality 749
    - Notice of Decision 749
  - Property Exempt From Taxation - Homestead - Continued Eligibility After Death Of Claimant 744
  - Occupancy 744
  - Ownership Interest 744
  - Property Exempt From Taxation -- Motor Vehicles, Recreational Vehicles, & Vessels Properly Registered 774
    - Exempt Motor Vehicles 774
    - Exempt Permanently Affixed Personal Property 774
    - Motor Vehicle Defined 774
    - Recreational Vehicles 774
    - Taxable Personal Property 774
    - Taxable Vehicles 774
  - Property Exempt From Taxation - Property Used For School Or Educational Purposes 738
    - Application for Exemption for Leased Personal Property 738
    - Eligibility of Leased Property 738
  - Property Exempt From Taxation-- Facilities For Water Or Air Pollution Control 775
    - Calculation of Partial Exemption 775
    - Exempt Property 775
    - Exemption for Portion of Water Corporation Property 776
    - Exemption Reported on Abstracts 776
    - Filing Procedure 775
    - Ineligibility 775
    - Inspection 776
  - Provisional Permit Audiology 596
    - Application -- Quarterly Reports 596
    - Issuance of a Provisional Permit 596
    - Supervisor -- Responsibilities -- Restrictions 596
  - Fitting & Dealing Hearing Aids 593
    - Adequate Personal Contact -- Requirements 593
    - Application -- Quarterly Reports 594
    - Exemptions 595
    - Issuance of a Provisional Permit 593
    - Supervisor -- Responsibilities -- Restrictions 594
  - Speech-Language Pathology 595
    - Application & Quarterly Reports 595
    - Issuance of a Provisional Permit 595
    - Supervisor -- Responsibilities -- Restrictions 595
  - Public Records Act Compliance 603, 933
- Q**
- Qualifications For Advanced Practice Registered Nurse 521
    - Completion of Advanced Practice Registered Nurse Program 521
    - Current Licensure 521
    - National Certification 521
  - Qualifications For Licensure By Endorsement 541
    - Current Practice Experience 541
    - Graduation Required 541
    - License from Another Nursing Jurisdiction 541
    - Licensing Examination 541
    - Minimum Requirements 541
  - Qualifications For Licensure By Examination 540
    - In-State 540
    - Out-of-State 540
    - Practical Nurse Equivalency Requirement 540

- Time Limit for Writing Examinations 540
- Qualifications For Licensure Of Graduates Of Schools Of Nursing Located Outside The United States, Its Territories, Or Commonwealths 542
- Education Credentials 542
- Examination/Re-Examination 542
- License 542
- Qualifications 542
- Qualifications For Speech-Language Pathologist Licensure 593
- Examination 593
- Graduate Program Requirement 593
- Supervised Experience 593
- Qualifications Of Regulated Articles For Quarantine Release 62
- Analysis Certificate 62
- Planting Seed Stock of Regulated Articles 62
- Quarantine Release Tag 62
- Qualified Applicants & Lessees 469
- Quality Assurance 106
- Division Personnel Training & Certification 107
- Inspected Installations 106
- Inspectors & Programs 107
- Reviews by Division Personnel 107
- R**
- Reciprocity 51
- Recognition Of Accreditation Organizations 120
- Recognition Of National Certifying Organizations For Advanced Practice Registered Nursing 526
- Reconsideration -- Rehearing 823
- Answer 823
- Consideration 823
- Disposition 823
- Procedure for Reconsideration 823
- Procedure For Rehearing 823
- Time for Filing & Service 823
- Records 589
- Referral Of Petition To The Commission 171
- Registration Examination 544
- Grading 544
- Passing (ARE) 544
- Transition 544
- When Taken 544
- Registration Of Approved Materials 59
- Department Not Liable 59
- Effect of Registration 59
- Initial & Annual Inspection Fees 59
- Registration 59
- Registration Fees 59
- Revocation of Registration 60
- Seal for Registered Branded Materials 60
- Registration Of Post-Secondary Educational Institutions 120
- Application 121
- Deadline for Registration 121
- Delegation 120
- Idaho Presence 120
- Information Required 122
- Institutions Exempt from Registration 121
- Institutions That Must Register 121
- Registration Fees 121
- Registration Requirement 120
- Registration Of Proprietary Schools 122
- Application 123
- Deadline for Registration 124
- Delegation 122
- Exemptions from Registration 123
- Idaho Presence 122
- Information Required 124
- Registration Fees 124
- Registration Requirement 122
- Reinstatement Of Advanced Practice Registered Nurse License 524
- Criminal Background Check 524
- Current Registered Nurse License 524
- Evidence of Certification 524
- Fee 524
- Prior Board Order 524
- Reinstatement Rules 524
- Remote Dispensing Site Registration 675
- Remote Dispensing Site Registration 675
- Supplemental Registration Application Requirements 675
- Renewal Of Advanced Practice Registered Nurse License 523
- Current Registered Nurse License 523
- Evidence of Certification 523
- Evidence of Continuing Education 523
- Exemption From Requirements 523
- Fee 523
- Hours of Practice 523
- Peer Review Process 523
- Renewal Of License 67
- Renewal Or Expiration Of License 607
- Reinstatement 607
- Renewal Or Reinstatement Of License 587
- Expiration Date 587
- Reinstatement 587
- Rental 462
- Rental Due Date 462
- Rental Rates 462
- Special Uses 462
- Rentals 470
- Advance Annual Rental 470
- Amount 470
- Rentals Or Leases Of Tangible Personal Property 719
- Bare Equipment Rental 719
- Cross-References 721
- Exempt Equipment Rentals 720
- Fully Operated Equipment Rentals 719
- In General 719
- Lease-Purchase & Lease With Option to Purchase 721
- Maintenance of Rental Equipment 720
- Mixed Use of Rental Equipment 720
- Operator Required to Be Paid by Customer 720
- Out-of-State Rental/Lease 721
- Personal Property Tax 720
- Rental Payments Applied to Future Sales 720
- Rentals to Exempt Entities 720
- Report Of Abandoned Property 989
- Incomplete Report 989
- Underlying Shares & Cumulative Dividends 989
- Voluntary Payments of Unclaimed Property 989
- Report Of Investigation 513
- Complaint Concerns 513
- Copies of Documents 513
- Previous Complaints 513
- Provider Information 513
- Provider's Response 513
- QAS Review 513
- Summary of Additional Information 513
- Representation & Practice Before The Board 805
- Authorized Attorneys 805
- Corporations 805
- Limited Liability Company (LLC) 805
- Natural Persons 805
- Partnerships, Joint Ventures & Trusts 805
- Public Officers 805
- Request For Transcript 825
- Required Documents Public Charter Schools Authorized By The Commission Must Submit To The Commission 181
- Accreditation Reports 181
- Board Members 181
- Complaints 181
- Financial Statements 181
- Goals Attainment 181
- Lease Agreement 181
- Programmatic Operations Audit 181
- Proof of Compliance 181
- Required Inspections
- Final Inspection Tags 82
- Ground Work Inspection Tags 82
- Inspection Tags for Unacceptable Plumbing 82
- Rough-In Inspection Tags 82
- Requirements For All Brassica Seeds To Be Planted In Idaho 38
- Exemptions 38

- Requirements 38
  - Requirements For Donation To Charity
    - Limitation On Expenses 967
  - Requirements For License As Ring Official
    - Equivalent Qualifications 67
    - Other Functions 67
    - Qualifications 67
    - Ring Officials Determination 67
  - Requirements For Licensure By Endorsement 606
    - Has Not Been Convicted of a Drug Offense 607
    - Has Not Been Disciplined 607
    - Holds a Current License 606
    - Is of Good Moral Character 607
  - Requirements For Original Licensure 604
    - Education 605
    - Examination 605
    - General 604
    - Waiver of Requirements 605
  - Requirements For Registration Of Externals, Interns & Residents 490
    - Application 490
    - English Language 490
    - Residence 490
  - Residential Care Or Assisted Living Facility & Certified Family Home Allowances 298
    - Budgeted Monthly Allowance Based On Level of Care 298
    - Care Levels & Monthly Allowances 298
    - CFH Operated by Relative 299
  - Residual Stocking & Reforestation 453
    - Purpose 453
    - Quality of Residual Stocking 453
    - Reforestation Exemptions 454
    - Sites Unpractical to Reforest 453
    - Stocking 453
    - Supplemental Reforestation 455
  - Restricted Return Of Drugs Or Devices 646
    - Consulting Pharmacy & PIC Responsibilities 647
    - Marking Ineligible Returns 647
    - Qualifying Returns 646
  - Restrictions & Limitations On Use 897, 907, 915
  - Review Of Petitions 169
    - If Approved, Charter Is Subject to Limitations on Number of New Charters 170
    - If Denied, Petitioners May Appeal 170
  - Initial Review of Petition 169
  - Notification of Findings After Initial Review 169
  - Substantive Review of Petition 170
  - Timeframe for Initial Review 169
  - Timeframe for Substantive Review 170
  - Written Response to Initial Review 170
  - Revocation Of A Permit 921
  - Room & Board Home Allowance 298
    - Basic Allowance for Participant in Room & Board Home 298
    - Budgeted Room & Board Allowance 298
  - Rough Bluegrass Quarantine Inspections 62
    - Application for Nursery Inspection 62
    - Infested Seed Stock 62
  - Royalties
    - Royalty Payments 470
  - Royalties 470
    - By-Product Testing 471
    - Calculation of Value 471
    - Commingling 471
    - Due Date 471
    - Measurement 471
    - Utilizations of Geothermal Resources 471
  - Rules Defining Gross Incompetence 561
    - Disciplinary Action or Sanctions 561
    - Displaying Gross Ignorance or Demonstrating Gross Inefficiency 561
    - Employment of Techniques or Methods of Practice 561
    - Failing to Perform Tests & Record Findings 561
    - Failure to Advise Patient of Possible Danger When a Lens Not Meeting Impact Resistance Standards of F.D.A. 561
    - Failure to Meet Prevailing Standards 561
    - Failure to Meet Prevailing Standards in the Referral of Any Patient Who is Suffering From Any Apparent or Suspected Pathological Condition 561
    - Failure to Provide Follow-Up Care 561
    - Failure to Release Prescription 561
    - Failure to Verify the Specifications of All Lenses 561
    - Illegal Prescription Sale, Administration, Distribution, or Use of Drugs 561
    - Sanitary Office 561
    - Sufficient Training or Education 561
    - Using Pharmaceutical Agents 561
  - Rules Governing Planting Of Regulated Articles 40
    - Analysis Certificate 40
    - Requirements 40
    - Tags 40
  - Rules Of Evidence 821
    - Depositions 821
    - Documentary Evidence 821
    - Evidence, Admissibility & Evaluation 821
    - Evidentiary Rulings 821
    - Failure to Produce Evidence -- Adverse Inference 821
    - Objections & Exceptions 821
    - Offer of Proof 821
    - Post-Hearing Evidence 821
    - Prepared Testimony 821
- S**
- S Corporations 706
    - Application of Credits 707
    - Minimum Tax 707
    - Nonproductive Mining Corporations 707
    - Qualified Subchapter S Subsidiary 707
    - Tax on S Corporations 706
    - Tax Resulting From the Requirements of Section 63-3022L, Idaho Code 707
  - S Corporations Operating Within & Without Idaho 707
    - Exceptions To Apportionment Formula 707
    - In General 707
    - Information Provided To Shareholders 707
    - Protection Under Public Law 86-272 708
    - Qualified Subchapter S Subsidiary 708
  - Sales Price Or Purchase Price
    - Defined 724
    - Charges Not Included 724
    - Gratuities 724
    - Sales Price & Purchase Price 724
    - Service Charges 725
    - Services Agreed to be Rendered as a Part of the Sale 724
  - Scope Of Appeal In Ad Valorem Case 822
  - Scope Of Practice 610
  - Secondary Categories For Improvements - Listing & Reporting 772
    - Cross Reference 774
    - Secondary Category 25 - Common Area Land & Improvements 772
    - Secondary Category 26 - Residential Condominiums 772
    - Secondary Category 27 - Commercial or Industrial Condominiums 772
    - Secondary Category 30 - Improvements 772
    - Secondary Category 31 - Improvements 772
    - Secondary Category 32 - Improvements 772
    - Secondary Category 33 - Improvements 772
    - Secondary Category 34 -

- Improvements 772
- Secondary Category 35 -
  - Improvements 772
- Secondary Category 36 -
  - Improvements 772
- Secondary Category 37 -
  - Improvements 772
- Secondary Category 38 -
  - Improvements 772
- Secondary Category 39 -
  - Improvements 772
- Secondary Category 40 -
  - Improvements 772
- Secondary Category 41 -
  - Improvements 772
- Secondary Category 42 -
  - Improvements 772
- Secondary Category 43 -
  - Improvements 772
- Secondary Category 44 -
  - Improvements 773
- Secondary Category 45 - Utility System Land & Improvements 773
- Secondary Category 46 - Manufactured Housing 773
- Secondary Category 47 - Improvements to Manufactured Housing 773
- Secondary Category 48 - Manufactured Housing 773
- Secondary Category 49 - Manufactured Housing 773
- Secondary Category 50 - Residential Improvements on Leased Land 773
- Secondary Category 51 - Commercial or Industrial Improvements on Leased Land 773
- Secondary Category 57 - Equities in Land With Improvements Purchased From the State 773
- Secondary Category 60 - Improvements on Railroad Rights-of-Way 773
- Secondary Category 61 - Improvements by Lessee Other Than Secondary Category 62 773
- Secondary Category 62 - Improvements on Exempt or Public Land 773
- Secondary Category 65 - Manufactured Housing 774
- Secondary Category 69 - Recreational Vehicles 774
- Secondary Category 81 - Exempt Improvements 774
- Secondary Categories For Land - Listing & Reporting 768
- Cross Reference 771
- Secondary Category 1 - Irrigated Agricultural Land 768
- Secondary Category 10 - Homesite Land 769
- Secondary Category 11 - Recreational Land 769
- Secondary Category 12 - Rural Residential Tracts 769
- Secondary Category 13 - Rural Commercial Tracts 770
- Secondary Category 14 - Rural Industrial Tracts 770
- Secondary Category 15 - Rural Residential Subdivisions 770
- Secondary Category 16 - Rural Commercial Subdivisions 770
- Secondary Category 17 - Rural Industrial Subdivisions 770
- Secondary Category 18 - Other Land 770
- Secondary Category 19 - Waste 771
- Secondary Category 2 - Irrigated Grazing Land 768
- Secondary Category 20 - Residential Lots or Acreages 771
- Secondary Category 21 - Commercial Lots or Acreages 771
- Secondary Category 22 - Industrial Lots or Acreages 771
- Secondary Category 25 - Common Area Vacant Land 771
- Secondary Category 3 - Non-Irrigated Agricultural Land 768
- Secondary Category 4 - Meadow Land 768
- Secondary Category 45 - Utility System Vacant Land 771
- Secondary Category 5 - Dry Grazing Land 769
- Secondary Category 57 - Equities In Vacant Land Purchased From the State 771
- Secondary Category 6 - Productivity Forestland 769
- Secondary Category 7 - Bare Forestland 769
- Secondary Category 8 769
- Secondary Category 81 - Exempt Land 771
- Secondary Category 9 - Patented Mineral Land 769
- Security For Tax Required 783, 788, 792
  - Amount of Security 783, 792
  - Failure to File Timely After Release from Security 790
  - New Wholesaler Application 788
  - Petition to Waive Security Deposit 784, 793
  - Reviewing Security on File 788
  - Security for a New Distributor 783
  - Security for a New Wholesaler or Brewery 792
  - Security for Payment of Tax 783, 792
  - Security for Payment of Taxes 788
  - Security Requirement Excused 783, 792
- Taxpayer Petition for Release From Security Requirement 793
- Taxpayer Petition for Release from Security Requirement 784
- Taxpayer Petition for Release from Security Requirements 789
- Types of Security 783, 788, 792
- Service Coordination
  - Definitions 405
  - Agency 405
  - Brokerage Model 405
  - Conflict of Interest 405
  - Crisis 405
  - High Cost Services 405
  - Human Services Field 405
  - Paraprofessional 406
  - Person-Centered Planning 406
  - Practitioner of the Healing Arts 406
  - Service Coordination 406
  - Service Coordination Plan 406
  - Service Coordination Plan Development 406
  - Service Coordinator 406
  - Supports 406
- Eligibility
  - Individuals Up To The Age Of
    - Twenty-One 406
    - Age 406
    - Diagnosis 406
    - Need Assistance 407
    - Serious Emotional Disturbance (SED) 407
    - Special Health Care Needs 407
  - Plan Development -- Written Plan 409
  - Adult Developmental Disability Service Coordination Plan 410
  - Plan Content 409
  - Plan Implementation 409
- Provider Qualifications 408
  - Agency Supervisor Required Education & Experience 408
  - Criminal History Check Requirements 409
  - Health, Safety & Fraud Reporting 409
  - Individual Service Coordinator Case Loads 409
  - Limitations on Services Delivered by Paraprofessionals 409
  - Paraprofessional Education & Experience 408
  - Provider Agreements 408
  - Service Coordinator Education & Experience 408
  - Supervision 408
- Service Of Documents 811
  - Proof of Service 811
  - Service 811
- Settlements 798
  - Agreement Final 799
  - Form of Settlement 799
  - Grounds for Settlement 798

- Withdrawal of Offer 799  
 Severability 507, 841  
 Size Of A Leasable Tract 471  
   Navigable Water Courses 472  
   Surface Area 472  
 Smoking 899, 908, 917  
 Social Work Supervisor  
   Registration 574  
   Registration 574  
   Renewal 574  
   Requirements for Registration 574  
 Sound Level & Amplification 900, 918  
 Standard Prescription Drug  
   Labeling 643  
   Cautionary Information 644  
   Date 644  
   Directions 644  
   Dispenser Information 643  
   Drug Name & Strength 644  
   Expiration 644  
   Patient 644  
   Pharmacist Identification 644  
   Prescriber 644  
   Quantity 644  
   Refills 644  
   Serial Number 643  
   Warning 644  
 Standards Of Conduct 538  
   Classification 538  
   License 538  
   Practice 539  
   Professional Responsibility 539  
   Violations 538  
 Standards Of Practice 610  
 Standards Of Practice For Advanced  
   Practice Registered Nursing 519  
   Certified Nurse Practitioner 520  
   Certified Nurse-Midwife 520  
   Certified Registered Nurse  
     Anesthetist 520  
   Clinical Nurse Specialist 520  
   Core Standards for All Roles of  
     Advanced Practice Registered  
     Nursing 519  
   Documentation of  
     Specialization 520  
   Purpose 519  
 Statement Of Public Policy & Code Of  
   Professional Conduct 576  
   Bartering 579  
   Business Relationships 579  
   Competent Practice for Social  
     Workers 578  
   Dual Relationships 579  
   The Advertising Rules for Social  
     Workers 578  
   The Social Worker's Conduct &  
     Comportment as a Social  
     Worker 577  
   The Social Worker's Ethical  
     Responsibility to Clients 576  
 Stipulations 820  
 Student Pharmacist  
   Utilization & Practice  
     Limitations 631  
     Activities 631  
     Identification of Student  
       Pharmacists 632  
     Unlawful Acceptance of  
       Assignment 632  
   Student Pharmacist Registration 642  
     Cancellation of Registration 642  
     Registration Requirements 642  
     Renewal 642  
 Subpoena 824  
   Fees 825  
   Issuance of Subpoena 824  
   Motion Contents & Timing 825  
   Motion to Quash 825  
   Service 825  
   Substitution Of Representative 805  
   Substitution Or Withdrawal Of  
     Representative 805  
   Supervision 552, 572  
     Aides 553  
     Generally Applicable Supervision  
       Requirements 572  
     Occupational Therapy  
       Assistants 553  
     Out-of-State Supervised  
       Experience 573  
     Pursuing Licensure As Clinical  
       Social Worker 573  
     Pursuing Licensure As Independent  
       Practitioners 572  
     Record Keeping 553  
     Skill Levels 552  
     Supervision Levels 552  
     Supervision Ratios 553  
   Supervision By Responsible Managing  
     Employee 107  
   Supervision Of Trainees &  
     Technicians 590  
   Surface Markings 900, 918  
   Surrender, Termination, Expiration Of  
     Lease 480  
     Continuing Obligations 480  
     Equipment Removal 480  
     Failure to Pay Rental or Royalty 480  
     Procedure 480  
     Surrender After Termination 481  
     Termination for Cause 480
- T**
- Table A - Effect on New Construction  
   Roll 779  
 Table B - Effect on Hypothetical Taxing  
   District's Maximum Allowable  
   Property Tax Budget 779  
 Tag Exception For Companion To  
   Disabled Hunter 234, 259  
   Accompanying the Disabled  
   Hunter 234, 259  
   Assistance of Disabled Hunter by  
   Designated Companion 234, 259  
   Companion's Possession Limit 234,  
   259  
   Disabled Hunter Considered for  
     Violation 234, 259  
     Excepted From Tag or Control Hunt  
     Permit Possession 259  
     Excepted From Tag Possession 234  
     Valid License 259  
     Valid License & Applicable Special  
     Weapon Permit 234  
     Validation & Attachment of  
     Tag 234, 259  
     Written Statement of  
     Designation 234, 259  
   Tag Validation & Attachment & Proxy  
   Statement 279  
   Tags For Controlled Hunts 235, 242,  
   251  
     Applicant Requirements 238, 245,  
     254  
     Applications 238, 245, 253  
     Controlled Hunt Drawing 240, 246,  
     255  
     Eligibility 237, 243, 252  
     Nonresident Tag Limitations 236,  
     243, 252  
     Refunds of Controlled Hunt  
     Fees 239, 246, 255  
     Second Drawing Exclusion 240,  
     246, 255  
     Unclaimed Tags 240, 246, 255  
     Use of Controlled Hunt Tags 235,  
     242, 251  
   Tags, Stamps, Permits, &  
   Validations 257, 261  
   Early September Canada Goose  
   Hunts 259, 262  
   Migratory Game Birds 257, 261  
   Sage Grouse or Sharp-Tailed  
   Grouse 257, 261  
   Wild Turkey 257, 261  
   Tax Exemption For New Capital  
   Investments 744  
   Continuation of Tax Exemption  
   Following the End of the Project  
   Period 745  
   Cross Reference 745  
   Failure to Make the Qualifying New  
   Capital Investment 745  
   New Construction 745  
   Notification of New Capital  
   Investment 744  
   Property of the Taxpayer 745  
   Tax On Individuals, Estates, &  
   Trusts 698  
   In General 698  
   Tables Identifying the Idaho Tax  
   Rates and Income Tax  
   Brackets 699  
   Tax Computation 698  
   Tax Paid By Pass-Through Entities For  
   Officers, Directors, Owners, Or  
   Beneficiaries -- Election For Taxable  
   Years Beginning On Or After January  
   1, 2011, & Before January 1,  
   2012 691  
   Election Provided in Section 63-

- 3022L, Idaho Code 691
- Failure to Make Election 691
- Making the Election 691
- Tax Paid By Pass-Through Entities For Owners Or Beneficiaries --
  - Computation Of Idaho Taxable Income For Taxable Years Beginning On Or After January 1, 2012 691
  - Deductions 692
  - Double Deductions Disallowed 693
  - In General 692
  - Income Reportable to Idaho 692
- Technician-In-Training
  - Registration 643
  - Cancellation of Registration 643
  - Duties 643
  - Registration Expiration 643
  - Renewal 643
- Temporary License 494, 532
  - Applicants from Other Countries 533
  - Applicants Not in Active Practice 532
  - Fee 533
  - Issued at Discretion of Board 532
  - Temporary Licensure by Examination 532
  - Temporary Licensure by Interstate Endorsement 532
  - Unsuccessful Examination Candidates 532
- Temporary Licensure -- Advanced
  - Practice Registered Nurse 522
  - Applicants Awaiting Initial Certification Examination Results 522
  - Applicants Holding a Temporary Registered Nursing License 523
  - Applicants Whose Certification Has Lapsed 522
  - Applicants Without Required Practice Hours 523
  - Application Processing 523
  - Term of Temporary License 523
- Testing Requirements 34
  - Brucellosis 34
  - Red Deer Genetic Factor 34
- The Idaho Content Standards 156
- Timber Harvesting 449
  - Drainage Systems 449
  - Location of Landings, Skid Trails, & Fire Trails 449
  - Maintenance of Productivity & Related Values 452
  - Purpose 449
  - Quality of Residual Stocking 449
  - Soil Protection 449
  - Stream Protection 450
  - Treatment of Waste Materials 450
- Time for Filing Income Tax
  - Returns 717
  - Due Date of Returns 717
  - Fifty-Two/Fifty-Three Week Years 717
- Mail 717
- Timely Filing Defined 717
- Tracking 513
  - Case Is Closed 513
  - Consultant Is Requested 513
  - Further Investigation Is Requested 513
  - Opportunity to Meet With Committee 514
  - Other Disciplinary Action Directed 514
  - Recording of Board Action 514
  - Records Review is Requested 514
  - Stipulation and Order Is Issued 514
- Trade-Ins, Trade-Downs & Barter 725
  - Core Charges 726
  - Disallowed Trade-In Deductions 725
  - Insurance Settlements 726
  - Rental/Lease Property Traded-In 726
  - Trade-Downs 725
  - Trade-In Allowance 725
  - Trade-In for Rental/Lease Property 726
  - Trade-Ins 725
- Trapping Big Game Animals 276
  - Defined Terms 276
  - Methods of Take When Trapping 277
  - Trapping Hours 277
  - Unlawful Methods of Take 278
  - Wounding & Retrieving 277
- Trapping On Game Preserves & Wildlife Management Areas 272
  - Contact or Registration Requirements 272
  - Game Preserves & Wildlife Management Areas 272
  - Restrictions 273
- Traps 278
  - Checking Traps 278
  - Identification Tags for Traps 278
  - Release of Non-Target Catches 278
  - Removing Trapped Animals of Another 278
- Trespass 464
  - Civil Action by Lessee 464
  - Continuing Trespass 464
  - Loss or Waste 464
  - Trespass Claims 464
- Tuberculosis
  - Change of Ownership 29
  - Rules & UM&R 29
- U**
- Unauthorized & Nonstandard
  - Encroachments 958
  - Compliance 958
  - Encroachment Removal 958
  - Liability of Applicant 958
  - Nonstandard Encroachment 958
  - Prohibition 958
- Unclaimed Expenses & Checks 988
- Undercover Plate Display 926
- Undercover Plate Status 926
  - Emission Testing of Undercover Vehicles 926
  - Expiration of Plates 926
  - Reissue of Plates 926
  - Transfer of Plates 926
- Unit Or Cooperative Plans Of Development Or Operation 479
  - Contents 479
  - Continuation of Lease 479
  - Department of Water Resources 479
  - Evidence of Agreement 479
  - IDWR Approval 479
  - Lease Modification 479
  - Term 479
  - Unit Plan 479
- Unlawful Methods Of Take 230
  - Bows, Crossbows, Arrows, Bolts, Chemicals or Explosives 230
  - Firearms 230
  - Muzzleloaders 231
  - Other 232
  - Short-Range Weapon 232
- Unprofessional Conduct 663
  - Diversion of Drug Products & Devices 664
  - Excessive Provision of Controlled Substances 664
  - Exclusive Arrangements 664
  - Failure to Confer 664
  - Failure to Counsel or Offer Counseling 664
  - Failure to Follow Board Order 664
  - Failure to Report 664
  - Lack of Fitness 664
  - On-Duty Intoxication or Impairment 664
  - Prescriber Incentives 664
  - Prescription Drug Order Noncompliance 664
  - Substandard, Misbranded, or Adulterated Products 664
  - Unethical Conduct 664
  - Unlawful Possession or Use of Drugs 664
- Update Of Records 603
- USDWDefinitions, IDAPA 37.03.03
  - Underground Source of Drinking Water 835
- Use Of An Architect's Seal 546
- Use Of Bait For Hunting 275
  - Containers 276
  - Establishment of Bait Sites 276
  - Location 276
  - Time 275
  - Types 276
- Use Of Interior State Facilities 907
  - Authorized Uses by the Public 907
  - Prohibited Uses 907
- Use Of Ratio Study to Test for Equalization in Counties 742
  - Cross References 744
  - Equalization Ratio Study 742

- Exception from Requirement for at Least One Observation for Use of Secondary Category in Adjusted Value Determination 743
- Follow-Up Ratio Study 742
- Notice of Follow-Up Ratio Study 743
- Reasonable Statistical Certainty 743
- Submission of Additional Information 743
- Tested For Equalization 742
- Use of Alternate Ratio Study 743
- Use of Ratio Study Results 743
- Use Of State Capitol Exterior 914
  - Authorized Uses by the Public 914
  - Priority of Uses 915
  - Prohibited Uses 914
  - State Events & Exhibits 915
- Use Of State Facilities 896
  - Authorized Uses by the Public 896
  - Priority of Uses 897
  - Prohibited Uses 897
  - State Events & Exhibits 897
- Use Of Titles, Abbreviations, & Designations For The Practice Of Nursing 528
  - Licensed Practical Nurse Title 528
  - Registered Nurse Title 528
  - Title for Graduates 528
  - Title of Certified Nurse Midwife 528
  - Title of Clinical Nurse Specialist 528
  - Title of Nurse Practitioner 528
  - Title of Registered Nurse Anesthetist 528
- Titles 528
- Uses Interfering With Access Or Use Of Facility 898, 907, 915
  - Interference With Access 907, 915
  - Interference with Access 898
  - Interference With Primary Use of Facility or Real Property 907
  - Interference with Primary Use of Facility or Real Property 898
  - Interference With Primary Use of State Capitol Exterior 915
- Utility Service 900, 909, 918
- V**
- Vehicle Titling 925
  - For Exempt Registration & License Plates 925
  - Undercover Vehicle Titling 925
- Vending Machines 659
- Violation Point Count System 928
  - Dual Violation 928
  - Points Assessed 928
  - Points for Moving Traffic Violations 928
  - Speeding Violation 928
  - Violation Point Count List 928
- Violations, Formal Notification & Enforcement 835
  - Additional 835
  - Enforcement 835
  - Formal Notification 835
  - Violations 835
- Voluntary Noxious Weed Free Forage & Straw Certification Program
  - Application for Certification 49
  - Cancellation for Failure to Comply 52
  - Certification Fees 52
  - Certification Program 49
  - Certification Standards 51
  - Certification Training 49
  - Certifying Authority 49
  - Copy of Inspections & a List of Approved Inspectors 51
  - Enforcement & Cancellation 52
  - Field Inspection Procedures 50
  - Misuse of Transit Certificate & Certification Markings 52
  - Post-Certification & Distribution Requirements 51
  - Purpose 49
- Voluntary Posting 51
- W**
- Waivers Or Variances 622
  - Additional Information 622
  - Cancellation or Modification of a Waiver or Variance 623
  - Conditions 622
  - Content and Filing of a Waiver or Variance Petition 622
  - Criteria 622
  - Granting or Denying the Petition for Waiver or Variance 622
  - Prohibited Requests 622
  - Time Period of Waiver or Variance 622
  - Violations 623
- Waste Prevention, Drilling & Production Obligations 475
  - Additional Requirements 476
  - Diligence 476
  - Prevention of Waste Through Reinjection 476
  - Unused Wells 476
  - Waste 475
- Water Rights 477
  - Potable Water Discovery 477
- When Permits Are Required For Cattle
  - Beef Bulls 32
  - Canadian Cattle & Canadian Domestic Bison 33
  - Dairy 32
  - Female Beef Cattle 32
  - Other 33
  - Restricted Areas 32
- Wine Tax Returns & Reports 785
  - Due Date of Reports 785
  - Prescribed Forms 785
  - Requirements of a Valid Return 786
  - Weekend or Holiday Due Date 785
- Withdrawal 818
  - Withdrawal Of Approval Of Programs 106
  - Administrative Proceedings 106
  - Division Withdrawal 106
  - Re-Approval 106
  - Withdrawal Of Petition 171
  - Withdrawal Of Petition, Referral Of Petition To The Commission
    - Failure of Authorized Chartering Entity to Make a Good Faith Effort 171
    - Reasonable and Good Faith Effort 171
  - Referral of Petition by Local Board of Trustees 171
  - Withdrawal by Charter Petitioners 171
  - Wrestlers -- Physical Examination 70
  - Written Interpretations 282
  - Written Statement Of Suitability For Licensure 606
    - Applicant Bears the Burden 606
    - Consideration of Factors & Evidence 606
    - Interview 606