

IDAHO ADMINISTRATIVE BULLETIN

September 4, 2013 -- Volume 13-9

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C.L. "Butch" Otter, Governor
Teresa Luna, Director, Department of Administration
Dennis Stevenson, Administrative Rules Coordinator
Edward Hawley, Administrative Rules Specialist
Bradley Hunt, Rules Analyst and Desk-top Publishing Specialist

IDAHO ADMINISTRATIVE BULLETIN

Table of Contents

September 4, 2013 -- Volume 13-9

PREFACE	7
IDAPA 02 - DEPARTMENT OF AGRICULTURE	
02.02.14 - Rules for Weights and Measures	
Docket No. 02-0214-1301 (Fee Rule)	
Notice of Rulemaking - Proposed Rule.....	17
Docket No. 02-0214-1302	
Notice of Rulemaking - Adoption of Pending Rule	19
02.03.03 - Rules Governing Pesticide and Chemigation Use and Application	
Docket No. 02-0303-1301	
Notice of Rulemaking - Proposed Rule.....	20
Docket No. 02-0303-1302	
Notice of Rulemaking - Proposed Rule.....	28
02.04.19 - Rules Governing Domestic Cervidae	
Docket No. 02-0419-1301	
Notice of Rulemaking - Adoption of Pending Rule	31
02.04.20 - Rules Governing Brucellosis	
Docket No. 02-0420-1301	
Notice of Rulemaking - Proposed Rule.....	32
02.04.21 - Rules Governing Importation of Animals	
Docket No. 02-0421-1301	
Notice of Rulemaking - Proposed Rule.....	34
02.06.02 - Rules Pertaining to the Idaho Commercial Feed Law	
Docket No. 02-0602-1301	
Notice of Rulemaking - Adoption of Pending Rule	39
02.06.12 - Rules Pertaining to the Idaho Fertilizer Law	
Docket No. 02-0612-1301	
Notice of Rulemaking - Adoption of Pending Rule	40
02.06.13 - Rules Relating to Rapeseed Production and Establishment of Rapeseed Districts in the State of Idaho	
Docket No. 02-0613-1301	
Notice of Rulemaking - Proposed Rule.....	41
02.06.41 - Rules Pertaining to the Idaho Soil and Plant Amendment Act of 2001	
Docket No. 02-0641-1301	
Notice of Rulemaking - Adoption of Pending Rule	44
IDAPA 07 - DIVISION OF BUILDING SAFETY	
07.03.01 - Rules of Building Safety	
Docket No. 07-0301-1301	
Notice of Rulemaking - Proposed Rule.....	45

07.03.01 - Rules of Building Safety
 Docket No. **07-0301-1302**
 Notice of Rulemaking - Proposed Rule.....53

 Docket No. **07-0301-1303**
 Notice of Rulemaking - Proposed Rule.....58

 Docket No. **07-0301-1304**
 Notice of Rulemaking - Proposed Rule.....63

07.03.11 - Rules Governing Manufactured/Mobile Home Industry Licensing
 Docket No. **07-0311-1301**
 Notice of Rulemaking - Proposed Rule.....68

IDAPA 09 - DEPARTMENT OF LABOR

09.01.30 - Unemployment Insurance Benefit Administration Rules
 Docket No. **09-0130-1301**
 Notice of Rulemaking - Proposed Rule.....79

09.01.35 - Unemployment Insurance Tax Administration Rules
 Docket No. **09-0135-1301**
 Notice of Rulemaking - Proposed Rule.....83

IDAPA 10 - BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS

10.01.01 - Rules of Procedure
 Docket No. **10-0101-1301**
 Notice of Rulemaking - Adoption of Pending Rule90

10.01.02 - Rules of Professional Responsibility
 Docket No. **10-0102-1301**
 Notice of Rulemaking - Adoption of Pending Rule93

10.01.04 - Rules of Continuing Professional Development
 Docket No. **10-0104-1301**
 Notice of Rulemaking - Adoption of Pending Rule94

IDAPA 11 - IDAHO STATE POLICE

11.11.01 - Rules of the Idaho Peace Officer Standards and Training Council
 Docket No. **11-1101-1301**
 Notice of Rulemaking - Proposed Rule.....95

IDAPA 15 - OFFICE OF THE GOVERNOR
DIVISION OF HUMAN RESOURCES

15.04.01 - Rules of the Division of Human Resources and Personnel Commission
 Docket No. **15-0401-1302**
 Notice of Rulemaking - Proposed Rule.....104

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.05.01 - Use and Disclosure of Department Records
 Docket No. **16-0501-1301**
 Notice of Rulemaking - Proposed Rule.....118

16.05.06 - Criminal History and Background Checks
 Docket No. **16-0506-1302**
 Notice of Rulemaking - Proposed Rule.....120

16.05.06 - <i>Criminal History and Background Checks</i> Docket No. 16-0506-1303 (Fee Rule) Notice of Rulemaking - Proposed Rule.....	128
16.06.01 - <i>Child and Family Services</i> Docket No. 16-0601-1302 (Fee Rule) Notice of Rulemaking - Proposed Rule.....	130
16.07.17 - <i>Alcohol and Substance Use Disorders Services</i> Docket No. 16-0717-1301 Notice of Rulemaking - Proposed Rule.....	132
16.07.20 - <i>Alcohol and Substance Use Disorders Treatment and Recovery Support Services Facilities and Programs</i> Docket No. 16-0720-1301 Notice of Rulemaking - Proposed Rule.....	140
16.07.33 - <i>Adult Mental Health Services</i> Docket No. 16-0733-1301 Notice of Rulemaking - Proposed Rule.....	150
IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE	
18.01.04 - <i>Rules Pertaining to Bail Agents</i> Docket No. 18-0104-1301 Notice of Rulemaking - Proposed Rule.....	157
IDAPA 20 - DEPARTMENT OF LANDS	
20.02.01 - <i>Rules Pertaining to the Idaho Forest Practices Act</i> Docket No. 20-0201-1301 Notice of Rulemaking - Proposed Rule.....	159
IDAPA 23 - BOARD OF NURSING	
23.01.01 - <i>Rules of the Idaho Board of Nursing</i> Docket No. 23-0101-1301 Notice of Rulemaking - Proposed Rule.....	171
IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES	
24.06.01 - <i>Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants</i> Docket No. 24-0601-1301 Notice of Rulemaking - Temporary and Proposed Rule	176
24.07.01 - <i>Rules of the Idaho State Board of Landscape Architects</i> Docket No. 24-0701-1301 (Fee Rule) Notice of Rulemaking - Proposed Rule.....	179
24.08.01 - <i>Rules of the State Board of Morticians</i> Docket No. 24-0801-1301 Notice of Rulemaking - Proposed Rule.....	182
24.14.01 - <i>Rules of the State Board of Social Work Examiners</i> Docket No. 24-1401-1301 Notice of Rulemaking - Temporary and Proposed Rule	186

IDAPA 28 - DEPARTMENT OF COMMERCE

28.03.01 - *Rules of the Idaho Opportunity Fund*
 Docket No. **28-0301-1301 (New Chapter)**
 Notice of Rulemaking - Temporary and Proposed Rule 189

28.03.04 - *Rules of the Business and Jobs Development Grant Fund*
 Docket No. **28-0304-1301 (Chapter Repeal)**
 Notice of Rulemaking - Temporary and Proposed Rule 194

IDAPA 34 - SECRETARY OF STATE

34.06.01 - *Rules Governing the Electronic Recording of Real Property*
 Docket No. **34-0601-1301 (New Chapter)**
 Notice of Rulemaking - Adoption of Pending Rule 196

IDAPA 35 - STATE TAX COMMISSION

35.01.03 - *Property Tax Administrative Rules*
 Docket No. **35-0103-1302**
 Notice of Intent to Promulgate Rules - Negotiated Rulemaking 197

Docket No. **35-0103-1303**
 Notice of Intent to Promulgate Rules - Negotiated Rulemaking 199

35.01.05 - *Motor Fuels Tax Administrative Rules*
 Docket No. **35-0105-1301**
 Notice of Rulemaking - Proposed Rule 200

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.02.71 - *Rules Governing Driver's License Violation Point System*
 Docket No. **39-0271-1301**
 Notice of Rulemaking - Proposed Rule 211

39.03.12 - *Rules Governing Safety Requirements of Overlegal Permits*
 Docket No. **39-0312-1301**
 Notice of Rulemaking - Temporary and Proposed Rule 216

IDAPA 46 - BOARD OF VETERINARY MEDICINE

46.01.01 - *Rules of the State of Idaho Board of Veterinary Medicine*
 Docket No. **46-0101-1301**
 Notice of Rulemaking - Proposed Rule 220

Docket No. **46-0101-1302**
 Notice of Rulemaking - Proposed Rule 230

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

The Upper (North Fork) Coeur d'Alene River Temperature TMDL Addendum (HUC 17010301)
 Docket No. **58-0000-1305**
 Notice of Final Decision 233

IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

59.01.06 - *Retirement Rules of the Public Employee Retirement System of Idaho (PERSI)*
 Docket No. **59-0106-1301**
 Notice of Rulemaking - Proposed Rule 234

SECTIONS AFFECTED INDEX 236

LEGAL NOTICE - SUMMARY OF PROPOSED RULEMAKINGS 242

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES 246

SUBJECT INDEX 257

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.

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

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

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 2013

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
13-1	January 2013	*November 30, 2012	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 9, 2013	September 4, 2013	September 25, 2013
13-10	October 2013	**August 30, 2013	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

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2014

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
14-1	January 2014	*November 29, 2013	January 1, 2014	January 22, 2014
14-2	February 2014	January 10, 2014	February 5, 2014	February 26, 2014
14-3	March 2014	February 7, 2014	March 5, 2014	March 26, 2014
14-4	April 2014	March 7, 2014	April 2, 2014	April 23, 2014
14-5	May 2014	April 4, 2014	May 7, 2014	May 28, 2014
14-6	June 2014	May 9, 2014	June 4, 2014	June 25, 2014
14-7	July 2014	June 6, 2014	July 2, 2014	July 23, 2014
14-8	August 2014	July 11, 2014	August 6, 2014	August 27, 2014
14-9	September 2014	August 8, 2014	September 3, 2014	September 24, 2014
14-10	October 2014	**August 29, 2014	October 1, 2014	October 22, 2014
14-11	November 2014	October 10, 2014	November 5, 2014	November 26, 2014
14-12	December 2014	November 7, 2014	December 3, 2014	December 24, 2014

****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.***

ALPHABETICAL INDEX OF STATE AGENCIES AND CORRESPONDING IDAPA NUMBERS	
IDAPA 01	Accountancy , Board of
IDAPA 38	Administration , Department of
IDAPA 44	Administrative Rules Coordinator , Office of the
IDAPA 02	Agriculture , Idaho Department of
IDAPA 40	Arts , Idaho Commission on the
IDAPA 03	Athletic Commission
IDAPA 04	Attorney General , Office of the
IDAPA 53	Barley Commission , Idaho
IDAPA 51	Beef Council , Idaho
IDAPA 07	Building Safety , 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)
IDAPA 43	Canola and Rapeseed Commission , Idaho
IDAPA 28	Commerce , Idaho Department of
IDAPA 06	Correction , Board of
IDAPA 19	Dentistry , Board of
IDAPA 08	Education , State Board of and State Department of
IDAPA 10	Engineers and Land Surveyors , Board of Professional
IDAPA 58	Environmental Quality , Department of
IDAPA 12	Finance , Department of
IDAPA 13	Fish and Game , Department of
IDAPA 14	Geologists , Board of Registration for Professional

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

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

IDAPA 24	Occupational Licenses, Board of (24.20) 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)
IDAPA 25	Outfitters and Guides Licensing Board
IDAPA 50	Pardons and Parole, Commission for
IDAPA 26	Parks and Recreation, Department of
IDAPA 27	Pharmacy, Board of
IDAPA 11	Police, Idaho State
IDAPA 29	Potato Commission, Idaho
IDAPA 55	Professional-Technical Education, Division of
IDAPA 59	Public Employee Retirement System of Idaho (PERSI)
IDAPA 31	Public Utilities Commission
IDAPA 56	Rangeland Resources Commission, Idaho
IDAPA 33	Real Estate Commission, Idaho
IDAPA 34	Secretary of State, Office of the
IDAPA 57	Sexual Offender Management Board
IDAPA 49	Shorthand Reporters Board, Idaho Certified
IDAPA 60	Soil and Water Conservation Commission, Idaho State

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

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.02.14 - RULES FOR WEIGHTS AND MEASURES

DOCKET NO. 02-0214-1301 (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 71-111 and 71-121, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 18, 2013.

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

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

Amendments to IDAPA 02.02.14, Section 016, remove language that establishes an annual license fee for devices not on Table 1-A. Add language to establish a minimum license fee of \$12. Add new categories in Table 1-A for devices emerging into the market place, e.g., liquid and compressed natural gas meters and fuel additive meters. Increase license fees for Device Codes D, E & F to more accurately reflect inspection costs.

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

Section 71-121, Idaho Code, provides authority to establish fees. Impose a minimum license fee of \$12. Update device codes in Table 1-A to reflect new device types and establish a license fee. Increase the device license fee in Table 1-A for Device Codes D, E and F.

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

The fee increase will impact 1597 owners of commercial scales rated over 7,500 pounds by \$37,790. The minimum license fee of \$12 will impact approximately 473 owners of commercial devices by \$2,838. As a result, the weights and measures dedicated fund could see an increase of \$40,628. The general fund would not be impacted.

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 5, 2013 Idaho Administrative Bulletin, [Volume 13-6, pages 14 and 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 Kevin Merritt, Section Manager at (208) 332-8690.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to Kevin Merritt and must be delivered on or before September 25, 2013. Comments can be delivered via email to kevin.merritt@agri.idaho.gov or via regular mail to Kevin Merritt's attention at the address listed below.

DATED this 2nd day of August, 2013.

Brian J. Oakey
Deputy Director
Idaho State Dept. 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 FOR FEE DOCKET NO. 02-0214-1301

016. MAXIMUM AND MINIMUM LICENSE FEE SCHEDULE FOR COMMERCIALY USED WEIGHING AND MEASURING INSTRUMENTS AND DEVICES.

The annual license fee for instruments and devices is based on manufacturer's rated capacity. The minimum annual license fee for commercially used instrument and device types not listed in Table 1-A, will be determined by one-third (1/3) of the actual average time costs involved with testing that type of device shall be twelve dollars (\$12) when licensing a single device.

TABLE 1-A		
DEVICE CODE	KEY	FEE
A	Scales ≤ 50 lb	\$6.00
B	Scales > 50 ≤ 1,159 lb	\$12.00
C	Scales ≥ 1,160 ≤ 7,499 lb	\$24.00
D	Scales ≥ 7,500 ≤ 59,999 lb	\$65 100.00
E & F	Scales 60,000 lbs or more	\$80 100.00
G	Motor-fuel device Meter < 20 gpm	\$6.00
H	Petroleum-m Meter ≥ 30 < 150 gpm	\$33.00
I	Petroleum-m Meter ≥ 150 gpm	\$40.00
J	LPG dispenser	\$40.00
K & L	LPG temperature compensated	\$60.00
M	Cordage <u>or Fabric</u> meter	\$5.00
N	Fabric meter <u>Natural gas motor fuel devices</u>	\$5 60.00
O	Bulk oil meter	\$35.00
T	Motor-fuel device Meter > 20 ≤ 30 gpm <u>or fuel additive metering devices</u>	\$10.00

(4-9-09)()

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.02.14 - RULES FOR WEIGHTS AND MEASURES

DOCKET NO. 02-0214-1302

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2014 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 2014 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 3, 2013 Idaho Administrative Bulletin, **Vol. 13-7, pages 16 and 17**.

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 2nd day of August, 2013.

Brian J. Oakey, Deputy Director
Idaho State Dept. of Agriculture
Phone: (208) 332-8500
Fax: (208) 334-2170

2270 Old Penitentiary Rd.
P.O. Box 790
Boise, Idaho 83701

DOCKET NO. 02-0214-1302 - 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 13-7, July 3, 2013, pages 16 and 17.

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2014 Idaho State Legislature for final adoption.

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.03.03 - RULES GOVERNING PESTICIDE AND CHEMIGATION USE AND APPLICATION

DOCKET NO. 02-0303-1301

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 September 18, 2013.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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:

It has been ISDA's policy that pesticide licensing exam scores and recertification credits are valid for one (1) year. This policy has never been included in rule and the Pesticide Advisory Committee has recommended that it be added. Changes to Subsections 100.02 and 100.03 of this rule will allow for a one (1) year time period for new or renewing licensees to obtain an applicator license without penalty. The rule revisions will also provide a cut-off time for inactive licensees to renew their licenses before they will be required to retest.

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: ISDA does not anticipate any fiscal impact from the changes to be made to the Rule during the 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 June 5, 2013 Idaho Administrative Bulletin, [Volume 13-6, page 16](#). 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 at (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 September 25, 2013. Comments can be delivered via email to ben.miller@agri.idaho.gov or via regular mail to Ben Miller's attention at the address listed below.

DATED this 2nd day of August, 2013.

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

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0303-1301

050. PRIVATE APPLICATOR LICENSING.

01. Applying for a Private Applicator's License. Applicants who wish to obtain a private applicator's license shall: (4-4-13)

a. Fill out an application prescribed by the Department; and (4-4-13)

b. Take an examination based on the Environmental Protection Agency (EPA) core manual and score a minimum of seventy percent (70%). For the purpose of becoming licensed, examination scores shall be valid for twelve (12) months from the date of the examination. 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. (4-4-13)

a. Private applicators shall be certified and licensed in one or more of the following categories: (4-4-13)

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. (4-4-13)

b. 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)

03. 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 050.03.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 050.03.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 050.03.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 050.03.b. or 050.03.c. (4-4-13)

a. Licensing schedule.

Last Name		Month to License
Odd Year	Even Year	
A-D	M-P	March
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, provided that the license renewal application is submitted within twelve (12) months from the expiration date of the license. ~~(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. For the purpose of becoming licensed, recertification examination scores shall be valid for twelve (12) months from the date of the examination. ~~(3-20-97)~~()

051. -- 099. (RESERVED)

100. LICENSING PROFESSIONAL APPLICATORS AND PESTICIDE DEALERS.

01. Demonstration of Competence. (3-20-97)

a. Professional applicators shall not recommend the application or make an application of any pesticide for any purpose, unless they have demonstrated competence for that purpose, which competence must be demonstrated by passing Department examinations and becoming licensed in the appropriate categories listed in Subsection 100.02. (3-20-97)

b. An applicant shall demonstrate competency in the following areas: (3-20-97)

i. Labels and labeling, including terminology, instructions, format, warnings and symbols. (3-20-97)

ii. Safety factors and procedures, including protective clothing and equipment, first aid, toxicity, symptoms of poisoning, storage, handling, transportation and disposal. (3-20-97)

- iii. Laws, rules, and regulations governing pesticides. (3-20-97)
- iv. Environmental considerations, including the effect of climate and physical or geographical factors on pesticides, and the effects of pesticides on the environment, and the animals and plants living in it. (3-20-97)
- v. Mixing and loading, including interpretation of labels, safety precautions, compatibility of mixtures, and protection of the environment. (3-20-97)
- vi. Methods of use or application, including types of equipment, calibration, application techniques, and prevention of drift and other types of pesticide migration. (3-20-97)
- vii. Pests to be controlled, including identification, damage characteristics, biology and habitat. (3-20-97)
- viii. Types of pesticides, including formulations, mode of action, toxicity, persistence, and hazards of use. (3-20-97)
- ix. Chemigation practices involving the application of chemicals through irrigation systems, calibration, management, and equipment requirements. (4-5-00)
- x. For use of the Livestock Protection Collar (LPC), in addition to the requirements of Subsection 100.01.b.i. through 100.01.b.viii., professional applicators shall have training in and knowledge of the following: (3-19-99)
 - (1) Characteristics and habits of predatory animals, and particularly, coyotes. (3-19-99)
 - (2) Properties of the collars and of Sodium Fluoroacetate (Compound 1080). (3-19-99)
 - (3) Recordkeeping requirements set forth in Subsection 150.01 that will additionally include a record of each animal found poisoned or suspected of having been poisoned as a result of the use of Compound 1080, including target and non-target species. (3-19-99)
 - (4) The requirement for immediate reporting of suspected poisonings of non-target species and suspected poisonings of humans or domestic animals by the use of Compound 1080 to the United States Environmental Protection Agency (US EPA) and the Idaho State Department of Agriculture (ISDA). (3-19-99)
 - (5) How to properly dispose of animal remains, vegetation, or soil contaminated by a punctured LPC. (3-19-99)
 - (6) Practical treatment of Compound 1080 poisonings in humans and domestic animals. (3-19-99)
 - (7) Safe handling, attachment, and storage of LPC collars. (3-19-99)
 - (8) The requirement to post and maintain bilingual (English/Spanish or other second language appropriate for the region) signs at logical points of access to areas where LPCs are in use. (3-19-99)
 - (9) The requirement to perform inspections once every week to ensure that collars in use are accounted for, property positioned, and intact. (3-19-99)
 - (10) Knowledge of alternative controls of predation. (4-5-00)
- xi. For use of the LPC, in addition to the requirements of Subsections 100.01.b.i. through 100.01.b.x., professional applicators shall have training in and the ability to: (3-19-99)
 - (1) Recognize potential hazards to humans, domestic animals, and non-target wildlife from the use of the LPC. (3-19-99)

- (2) Read and understand the labeling specific to the LPC. (3-19-99)
- (3) Recognize general symptoms of poisoning by Compound 1080 in humans and domestic animals and take appropriate action. (3-19-99)
- (4) Recognize where the LPC can be used safely and effectively and, conversely, where alternative methods of control would be more appropriate. (3-19-99)
- (5) Assess damaged LPCs to determine which can be repaired and which must be disposed of properly. (3-19-99)
- (6) Properly dispose of the LPCs. (3-19-99)

02. Certification. A person shall be certified by passing Department examinations with a minimum of seventy percent (70%) in the applicable pesticide categories. For the purpose of becoming licensed, examination scores shall be valid for twelve (12) months from the date of the examination. ~~(5-8-09)~~ ()

a. Professional applicators shall be certified and licensed in one (1) or more of the following categories: (3-20-97)

i. Law and Safety (LS). This shall include general knowledge of pesticides including proper use and disposal, product characteristics, first aid, labeling, and laws. Certification in this category is required when certifying in Subsections 100.02.a.ii. through 100.02.a.ix. (3-20-97)

ii. Agriculture. For persons conducting field crop applications. Agriculture Herbicide (AH). Certification in this category shall also certify a person to make herbicide applications in rights-of-way, forests, and rangelands. Agriculture Insecticide/Fungicide (AI). Certification in this category shall also certify a person to make insecticide/fungicide applications in rights-of-way, forests, and rangelands. Soil Fumigation (SF). (4-5-00)

iii. Forest Environment (FE). For U.S. Forest Service and Bureau of Land Management personnel, contractors, and private industry personnel who control pests in forests and on rangelands. (3-20-97)

iv. Right-of-Way Herbicide (RW). For railroads, highway departments and others, for roadside weed control, soil sterilant herbicides, and weed control on public lands (non-crop). Certification in the Agricultural Herbicide category shall exempt the applicant from the need to certify in this category. (3-20-97)

v. Public Health Pest (PH). For abatement districts and others controlling mosquitoes and other public health pests. (3-20-97)

vi. Livestock Pest Control (LP). For persons treating livestock pests. (3-20-97)

vii. Ornamental Herbicide (OH). For persons conducting outside urban or residential herbicide applications, with the exception of soil sterilant applications (see Subsection 100.02.a.iv.). Ornamental Insecticide/Fungicide (OI). For persons doing outside urban or residential insecticide and fungicide applications, including exterior applications to residential, urban or commercial buildings, excluding structural destroying pests (see Subsection 100.02.a.ix.). (4-5-00)

viii. General Pest Control Operations (GP). For persons controlling pests in and around residential, commercial, or other buildings, excluding structural destroying pests. (3-20-97)

ix. Structural Destroying Pest (SP). For persons involved in the control of pests which destroy wooden structures, such as bridges, houses, offices, and warehouses. (3-20-97)

x. General Vertebrate Control (GV). For Wildlife Services (WS) personnel of the United States Department of Agriculture-Animal and Plant Health Inspection Service, for controlling vertebrates such as rodents, predators, and birds. (4-5-00)

- xi. Rodent Control (RC). For rodent districts and others, for the control of field rodents. Certification in the General Pest Control category shall exempt the applicant from the need to certify in this category. (3-20-97)
 - xii. Aquatic Weed and Pest Control (AW). For irrigation districts, canal companies and others, for weed and pest control on aquatic sites. (4-5-00)
 - xiii. Seed Treatment (ST). For persons doing treatments to protect seeds used for plant reproduction. (3-20-97)
 - xiv. Commodity Pest Control (CP). For persons controlling pests in stored commodities. (3-20-97)
 - xv. Potato Cellar Pest Control (PC). For persons who apply sprout inhibitors in potato cellars. (3-20-97)
 - xvi. Wood Preservative (WP). For persons who apply wood preservatives. (3-20-97)
 - xvii. Pest Control Consultant-Statewide (SW). For persons who make recommendations or supply technical advice concerning the use of any pesticide for agricultural purposes. (3-20-97)
 - xviii. Demonstration and Research (DR). For persons who apply or supervise the use of restricted use pesticides at no charge to demonstrate the action of the pesticide or conduct research with restricted use pesticides. A person shall be eligible to license in this category by passing the Pest Control Consultant examination. (3-20-97)
 - xix. Chemigation (CH). For persons who apply chemicals through an irrigation system, excluding Aquatic Weed and Pest Control applicators (see Subsection 100.02.xii.). (4-5-00)
 - xx. Livestock Protection Collars (LPC). For use of Livestock Protection Collars (LPC) containing the restricted use pesticide Compound 1080 to control predatory coyotes. (3-19-99)
 - b. Pesticide Dealers shall be certified and licensed in any category listed in Subsection 100.02 that pertains to the types of restricted use pesticides sold or distributed. (3-23-98)
 - c. Persons with an active license category on June 30, 1996, shall retain said category under the rules which became effective on July 1, 1996, until the expiration of the certification period or suspension of the license by the Department. (3-23-98)
 - d. Mixer-Loaders. Effective December 31, 1998, mixer-loader licenses issued by the Department shall expire. No person shall act as a mixer-loader for a professional applicator without first obtaining annual training. (3-23-98)
 - i. Training shall be conducted and certified by the professional applicator who employs the mixer-loader. Certification of training shall be on a form prescribed by the Department and must include the signatures of both the mixer-loader and the professional applicator providing the training. (3-23-98)
 - ii. Training shall include areas relevant to the pesticide mixing and loading operation and instruction on the interpretation of pesticide labels, safety precautions, first aid, compatibility of mixtures, and protection of the environment. (3-23-98)
 - iii. Employers of mixer-loaders shall comply with federal and state laws related to hazardous occupations and shall provide and ensure the use of personal protective equipment required in the label directions. (3-23-98)
- 03. Department Examination Procedures. (3-20-97)**
- a. Examinations shall be administered by a designated agent. (3-20-97)
 - b. To pass a Department examination, professional applicators and pesticide dealers shall obtain a

score of seventy percent (70%) or higher. (3-23-98)

c. Payment of examination fees shall be received by the Idaho Department of Agriculture before examination results may be released. (3-20-97)

d. A minimum waiting period of one (1) week shall be required before an applicant may retake an examination. (4-6-05)

04. Licensing Periods and Recertification. Beginning August 31, 2000, Pesticide Dealer licenses shall expire on August 31, of even numbered years and have a twenty-four (24) month duration. A Pesticide Dealer License application form shall accompany each new license or license renewal request. Professional applicator licenses shall be renewed by satisfying the recertification provisions of this section. Licenses belonging to professional applicators with last names beginning with A through L, inclusive, shall expire on the last day of the year in every odd-numbered year, and licenses belonging to professional applicators with last names beginning with M through Z, inclusive, shall expire on the last day of the year in every even-numbered year. Any professional applicator with less than thirteen (13) months in the licensing period shall not be required to obtain recertification credits during the initial licensing period. The recertification period for professional applicators shall be concurrent with their two (2) year licensing period. Recertification requirements may be accomplished by complying with either Subsection 100.04.a. or 100.04.b. (4-5-00)

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

i. A minimum of fifteen (15) credits shall be earned by a professional applicator during each recertification period. (3-23-98)

ii. A completed request for accreditation of a seminar shall be received by the Department not less than thirty (30) days prior to the scheduled seminar. Such a request shall be submitted on a form prescribed by the Department. Under exceptional circumstances, as described in writing by the person requesting accreditation, the thirty (30) day requirement may be waived. (3-20-97)

iii. Credit will be given only for those parts of seminars that deal with pesticide subjects as listed in Subsection 100.01.b. No credit will be given for training given to persons to prepare them for initial certification. (3-20-97)

iv. The number of credits assigned in advance for a seminar, or a part of a seminar, shall be tentative, and may be revised by the Department if it is later found that the training does not comply with Subsection 100.04.a.iii. (3-20-97)

v. Effective July 1, 1998, a recertification credit shall be based upon one (1) credit for each one (1) hour of instruction, as described in Subsection 100.04.a.iii. Should an applicator's recertification period include credits earned prior to July 1, 1998, those credits based on one hundred fifty (150) minutes of instruction shall be converted to three (3) credits for recertification purposes. (3-23-98)

vi. Verification of attendance at a seminar shall be accomplished by validating the attendee's pesticide license, using a stamp, sticker, or other method approved by the Department. A designated agent shall ensure that such attendance records are properly completed. Verification of attendance must be submitted with the license renewal application. (3-20-97)

vii. If a person has accumulated more than fifteen (15) credits during the recertification period, the excess credits may not be carried over to the next recertification period. (3-23-98)

viii. Upon earning the recertification credits as described above, a person shall be considered by the Department to be recertified for the next recertification period corresponding with the next issuance of a license, provided that the license renewal application is submitted within twelve (12) months from the expiration date of the license. (3-20-97)()

b. A person shall pass the Department's recertification examinations for all categories in which a person intends to license. (3-20-97)

i. Recertification examinations may be taken by a professional applicator beginning the thirteenth month of the recertification period. (3-23-98)

ii. The examination procedures as outlined in Subsection 100.03 shall be followed. (3-23-98)

iii. In addition to examinations for categories listed under Subsections 100.02.a.ii. through 100.02.a.ix., a person must also pass a Law and Safety recertification examination. (3-23-98)

iv. Recertification shall not be achieved by passing an entry-level examination. (3-20-97)

v. Upon passing the recertification examination(s), a person shall be considered by the Department to be recertified for the next recertification period. (3-20-97)

c. Any person who fails to accumulate the required recertification credits prior to the expiration date of their license shall be required to pass the appropriate recertification examination(s) before being licensed. (3-20-97)

05. Licensed Professional Applicator. Only a licensed professional applicator shall operate or supervise the operation of commercial application equipment by being present during the time of operation. Licensed professional applicators that start the application of chemicals through chemigation equipment do not have to be present during the entire application, but must return to monitor the proper application at least once every four (4) hours for the duration of the application. (3-29-12)

06. Interim Exemption from Pesticide Dealer Licensing and Recordkeeping. Until such time as the director promulgates specific rules pertaining to distribution of general use pesticides (GUPs), persons selling only GUPs shall not be required to obtain a pesticide dealer license or maintain distribution records of these products. (3-30-01)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.03.03 - RULES GOVERNING PESTICIDE AND CHEMIGATION USE AND APPLICATION

DOCKET NO. 02-0303-1302

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 September 18, 2013.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 02.03.03.800 will be amended to allow pesticide use on certain new seed crops, including: endive, parsnip, sugar and garden beets, Swiss chard, collards, lettuce, dill, kohlrabi, and mustard, without the need for an established residue tolerance. This will allow the State of Idaho's seed crop list to be essentially the same as the State of Washington's list.

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: ISDA does not anticipate any fiscal impact from the changes to be made to the Rule during the 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 June 5, 2013 Idaho Administrative Bulletin, [Volume 13-6, page 17](#). 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 at (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 September 25, 2013. Comments can be delivered via email to ben.miller@agri.idaho.gov or via regular mail to Ben Miller's attention at the address listed below.

DATED this 2nd day of August, 2013.

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

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0303-1302

800. PESTICIDE USE ON SEED CROP FIELDS.

01. **Nonfood and Nonfeed Site Conditions.** For purposes of pesticide registration, all alfalfa seed, carrot seed, chicory seed, clover seed, collard seed, coriander/cilantro seed, dill seed, endive seed, garden beet seed, kale seed, kohlrabi seed, leek seed, lettuce seed, mustard seed, onion seed, parsnip seed, pollinator rows of hybrid canola seed, radish seed, rutabaga seed, sugar beet seed, Swiss chard seed, and turnip seed crop fields are considered nonfood and nonfeed sites for pesticide use and the following conditions shall be met: (3-29-10)(____)

a. No portion of the seed alfalfa, carrot seed, chicory seed, clover seed, collard seed, coriander/cilantro seed, dill seed, endive seed, garden beet seed, kale seed, kohlrabi seed, leek seed, lettuce seed, mustard seed, onion seed, parsnip seed, pollinator rows of hybrid canola seed, radish seed, rutabaga seed, sugar beet seed, Swiss chard seed, or turnip seed plant, including but not limited to seed screenings, green chop, hay, chaff, combine tailings, pellets, meal, whole seed and cracked seed, may be grazed, used, or distributed for food or feed purposes. (3-29-10)(____)

b. The seed conditioner shall keep records of individual growers' alfalfa seed, carrot seed, chicory seed, clover seed, collard seed, coriander/cilantro seed, dill seed, endive seed, garden beet seed, kale seed, kohlrabi seed, leek seed, lettuce seed, mustard seed, onion seed, parsnip seed, pollinator rows of hybrid canola seed, radish seed, rutabaga seed, sugar beet seed, Swiss chard seed, and turnip seed dirt weight and clean weight for three (3) years and shall furnish the records to the Director forthwith upon request. (3-29-10)(____)

c. All seed screenings shall be disposed of at a sanitary landfill, incinerator, or other equivalent disposal site or by a procedure approved by the Director. (3-23-98)

d. The seed conditioner shall keep seed screening disposal records for three (3) years from the date of disposal and shall furnish the records to the Director forthwith, upon request. Disposal records shall consist of documentation from the disposal site and shall show the total weight of disposed screenings and the date of disposal. (3-20-97)

e. All alfalfa seed, carrot seed, chicory seed, clover seed, collard seed, coriander/cilantro seed, dill seed, endive seed, garden beet seed, kale seed, kohlrabi seed, leek seed, lettuce seed, mustard seed, onion seed, parsnip seed, pollinator rows of hybrid canola seed, radish seed, rutabaga seed, sugar beet seed, Swiss chard seed, or turnip seed grown or conditioned in this state shall bear a tag or container label which forbids the use of the seed for human consumption or animal feed. (3-29-10)(____)

f. No alfalfa seed, carrot seed, chicory seed, clover seed, collard seed, coriander/cilantro seed, dill seed, endive seed, garden beet seed, kale seed, kohlrabi seed, leek seed, lettuce seed, mustard seed, onion seed, parsnip seed, pollinator rows of hybrid canola seed, radish seed, rutabaga seed, sugar beet seed, Swiss chard seed, or turnip seed grown or conditioned in this state shall be distributed for human consumption or animal feed. (3-29-10)(____)

g. All portions of the seed alfalfa, seed carrot, seed chicory, seed clover, seed collard, seed coriander/cilantro, seed dill, seed endive, seed of garden beet, seed onion, seed parsnip, pollinator rows of hybrid canola seed, seed radish, seed rutabaga, seed of sugar beets, seed of Swiss chard, or seed turnip plant, including but not limited to seed screenings, pellets, meal, whole seed and cracked seed may be composted. All composted material may be applied to agricultural crop land as approved by the Director. (3-29-10)(____)

02. **Exemption.** Alfalfa seed, kale seed and radish seed crops grown for human consumption shall be exempt from the requirements of Subsection 800.01 provided: (3-29-10)

a. All pesticides used are labeled for use on alfalfa seed, kale seed, and radish seed crops and have established residue tolerances which allow food or feed use; and (3-29-10)

b. All producers maintain for three (3) years complete records of all pesticides applied as specified in Pesticide Use and Application Rules Subsection 150.02. These records shall be ready to be inspected, duplicated, or submitted when requested by the Director. (3-20-97)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.19 - RULES GOVERNING DOMESTIC CERVIDAE

DOCKET NO. 02-0419-1301

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2014 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 25-3704, Idaho Code.

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:

Amend Section 022 - The rule change specifies which forms of unique identification will be acceptable for producers exporting out of the state to utilize within their herd and to maintain compliance with the Animal and Plant Health Inspection Service (APHIS) National Chronic Wasting Disease (CWD) Herd Certification Program (HCP).

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 3, 2013 Idaho Administrative Bulletin, [Vol. 13-7, pages 18 through 22](#).

IDAHO CODE SECTION 22-101A STATEMENT: This rule does not regulate an activity not already regulated by the federal government, nor is it broader in scope or more stringent than the federal regulations.

FISCAL IMPACT: The following is a specific 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: ISDA does not anticipate any fiscal impact from the changes to be made to the Rule during the rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Dr. Scott Leibsle, Deputy Administrator - Division of Animal Industries at (208) 332-8540.

DATED this 2nd day of August, 2013.

Brian J. Oakey, Deputy Director
Idaho State Dept. of Agriculture
Phone: (208) 332-8500
Fax: (208) 334-2170

2270 Old Penitentiary Rd.
P.O. Box 790
Boise, Idaho 83701

DOCKET NO. 02-0419-1301 - 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 13-7, July 3, 2013, pages 18 through 22](#).

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2014 Idaho State Legislature for final adoption.

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.20 - RULES GOVERNING BRUCELLOSIS

DOCKET NO. 02-0420-1301

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. This action is authorized pursuant to Section 25-203, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 18, 2013.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 proposed rulemaking:

Amends Section 02.04.20.123 establishing a process through which a producer obtains a required permit prior to movement of any cattle out of the Designated Surveillance Area (DSA).

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: ISDA does not anticipate any fiscal impact from the changes to be made to the Rule during the 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 3, 2013 Idaho Administrative Bulletin, [Volume 13-7, page 23](#). A negotiated rulemaking meeting was held at the Fremont County Annex in St. Anthony, Idaho on July 11; there were many visitors in attendance and multiple comments were accepted on the proposed 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 this proposed rule, contact Dr. Scott Leibsle, Deputy Administrator - Division of Animal Industries at (208) 332-8540.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to Dr. Scott Leibsle and must be delivered on or before September 25, 2013. Comments can be delivered via email to scott.leibsle@agri.idaho.gov or via regular mail to Dr. Scott Leibsle's attention at the address listed below.

DATED this 2nd day of August, 2013.

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 FOR DOCKET NO. 02-0420-1301

123. DESIGNATED SURVEILLANCE AREA (DSA).

All intact cattle and domestic bison within a DSA are subject to additional rule requirements for the prevention or eradication of brucellosis. (3-29-12)

01. Individual Identification Requirements. All intact cattle and domestic bison, regardless of age, that leave the DSA must be identified with official individual identification. (3-29-12)

02. Testing Requirements Within The DSA. The following official brucellosis test requirements apply to all test eligible cattle and domestic bison that are or have been located within the DSA at any time between January 1 and June 15 of any calendar year. (3-29-12)

a. All test eligible cattle and domestic bison must have a negative brucellosis test within thirty (30) days prior to a change of ownership, interstate movement or prior to leaving the DSA, except cattle or domestic bison moving directly to an approved Idaho livestock market or a federally-inspected slaughter plant that will test the animals for brucellosis on arrival. (3-29-12)

b. Variances or exceptions to the brucellosis testing requirements may be considered on an individual basis by the administrator, based upon a brucellosis herd management plan. (3-29-12)

03. Permit Required for Movement Out of the DSA. In addition to the above testing requirements and prior to movement, all persons transporting Test Eligible cattle or domestic bison from within the DSA to a location outside the DSA, shall be required to obtain a movement permit via telephone from the Division of Animal Industries at least twenty-four (24) hours in advance. ()

a. Telephone Requests. DSA movement permits may be requested by telephone at (208) 332-8540 or facsimile at (208) 334-4062. ()

b. Contents of a Permit Request. The request for a movement permit shall include the following information: ()

i. Name and address of the consignor and consignee; ()

ii. Number and kind of animals; ()

iii. Origin of shipment; ()

iv. Final destination; and ()

v. Date of required brucellosis test. ()

c. Period of Validity. Permits shall be valid for no longer than fifteen (15) days from the date of issuance unless otherwise specified. ()

d. Penalties. Any person that fails to obtain a permit prior to movement of cattle out of the DSA may be assessed penalties pursuant to Section 990 of this rule. ()

IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.04.21 - RULES GOVERNING IMPORTATION OF ANIMALS

DOCKET NO. 02-0421-1301

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. This proposed rulemaking action is authorized pursuant to Section 25-203 Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 18, 2013.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 negotiated rulemaking and the principle issues involved:

Amends Domestic Cervidae import requirements to establish consistency with the new National Chronic Wasting Disease (CWD) Herd Certification Program (HCP). The changes to the import requirements will require compliance with the National CWD HCP prior to domestic cervidae importation into Idaho.

Amends Subsections 300.03 and 300.04 to more specifically define equine infectious anemia (EIA) import testing (Coggins test) requirements for horses destined for slaughter. The new rule will establish a time limit for imported horses to be destined to slaughter that have entered Idaho without a valid Coggins test. The current rule allows slaughter horse imports without a Coggins test, but does not specify when the animals must go to slaughter.

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: ISDA does not anticipate any fiscal impact from the changes to be made to the Rule during the 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 June 5, 2013 Idaho Administrative Bulletin, **Vol. 13-6, pages 18**. A negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on June 18, 2013; there were no visitors in attendance and no 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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this proposed rule, contact Dr. Scott Leibsle, Deputy Administrator - Division of Animal Industries at (208) 332-8540.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to Dr. Scott Leibsle and must be delivered on or before September 25, 2013. Comments can be delivered via email to scott.leibsle@agri.idaho.gov or via regular mail to Dr. Scott Leibsle's attention at the address listed below.

DATED this 2nd day of August, 2013.

Brian J. Oakey
Deputy Director
Idaho State Dept. 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 FOR DOCKET NO. 02-0421-1301

010. DEFINITIONS.

01. Accredited Veterinarian. A veterinarian approved by the Administrator and USDA/APHIS/VS in accordance with provisions of Title 9, Part 161, Code of Federal Regulations to perform functions of State-Federal animal disease control programs. (5-3-03)

02. Administrator. The administrator of the Division of Animal Industries, Idaho State Department of Agriculture, or his designee. (5-3-03)

03. Animals. All vertebrates, except humans. (5-3-03)

04. Approved Brucella Vaccine. A vaccine product that is approved by and produced under license of the United States Department of Agriculture for administration to cattle, domestic bison, swine or domestic cervidae for the purpose of enhancing the resistance to brucellosis. (5-3-03)

05. Approved Equine Feedlot. A feedlot approved by the Administrator to feed equids intended to be shipped directly to slaughter within sixty (60) days of arrival to the feedlot and have not been officially tested for Equine Infectious Anemia (EIA) prior to importation into Idaho. ()

056. Approved Feedlot. A feedlot approved by the Administrator to feed female cattle and domestic bison which have not been officially vaccinated against brucellosis or other bovidae not in compliance with Idaho's rules. (5-3-03)

067. Approved Slaughter Establishment. A USDA inspected slaughter establishment at which ante-mortem and post-mortem inspection is conducted by USDA inspectors. (5-3-03)

078. Brucellosis. An infectious disease of animals and humans caused by bacteria of the genus Brucella. (5-3-03)

089. Brucellosis Surveillance Area or High Risk Areas. Any area of a state that has been identified by USDA/APHIS/VS or state animal health officials as an area that poses a greater risk for transmission of brucellosis than would be expected based upon the official classification of the state. (5-3-03)

0910. Camelids. Llamas, alpacas, vicunas, camels. (5-3-03)

101. Cattle. All bovidae including domestic bison. (5-3-03)

112. Certificate. An official certificate of veterinary inspection or other approved certificate issued by an accredited veterinarian, state or federal animal health official or other approved official at the point of origin of the shipment of animal(s) being imported. (5-3-03)

123. Department. The Idaho State Department of Agriculture. (5-3-03)

134. Director. The director of the Idaho State Department of Agriculture or his designee. (5-3-03)

145. Division of Animal Industries. Idaho State Department of Agriculture, Division of Animal Industries. (5-3-03)

156. Domesticated. Propagated and maintained under the control of a person. (5-3-03)

167. Domestic Bison. All animals in the family Bison that are owned by a person. (5-3-03)

- ~~178.~~ **Domestic Cervidae.** Elk, fallow deer, and reindeer that are owned by a person. (5-3-03)
- ~~189.~~ **Equidae.** Horses, ponies, asses, mules, zebras. (5-8-09)
- ~~1920.~~ **Exposed.** Animals that have had direct contact with other animals, herds, or materials that have been determined to be infected with or affected by any infectious, contagious, or communicable disease. (5-3-03)
- ~~201.~~ **Federal Animal Health Official.** An employee of USDA/APHIS/VS who has been authorized to perform animal health activities. (5-3-03)
- ~~212.~~ **Feeder Animals.** Animals to be fed for slaughter only. (5-3-03)
- ~~223.~~ **Game Birds.** Domesticated gallinaceous fowl such as pheasants, partridge, quail, grouse and guineas. (5-3-03)
- ~~234.~~ **Hatching Eggs.** Fertilized eggs. (5-3-03)
- ~~245.~~ **Livestock.** Shall mean cattle, swine, horses, mules, asses, domestic cervidae, sheep, goats, camelids, and ratites. (5-3-03)
- ~~26.~~ **National CWD Herd Certification Program.** A federal-state-industry cooperative program, as provided for in the Code of Federal Regulations, Title 9, Part 55, January 1, 2013. The program, administered by APHIS and implemented by participating states, establishes CWD surveillance and testing standards cervidae owners must achieve before interstate transport will be permitted. ()
- ~~257.~~ **Negative.** Animals are classified as negative when they have been subjected to official tests for a disease, and the tests performed have failed to disclose evidence of the disease. (5-3-03)
- ~~268.~~ **Official Identification.** The unique individual identification of cattle, domestic bison, swine, or domestic cervidae in accordance with the rules governing each species. (5-3-03)
- ~~279.~~ **Official Vaccinate.** Cattle or domestic bison female that was inoculated, in accordance with IDAPA 02.04.20 "Rules Governing Brucellosis" or the Brucellosis Eradication UM&R, with an approved Brucella vaccine. (5-3-03)
- ~~2830.~~ **Person.** Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, or any legal entity, which is recognized by law as the subject of rights and duties. (5-3-03)
- ~~2931.~~ **Poultry.** The term shall mean chickens, turkeys, ducks, geese, guinea fowl, pigeons, pheasants, domestic fowl, waterfowl and gamebirds. (5-3-03)
- ~~302.~~ **Quarantine.** A written order executed by the Administrator to confine or hold animals on a premise, or any other location where found, and prevent movement of animals from a premise or any other location when the administrator has determined that the animals are infected with or exposed to a disease, or are not in compliance with the provisions of this chapter. (5-3-03)
- ~~313.~~ **Ratites.** Ostrich, emu, rhea and cassowaries. (5-3-03)
- ~~324.~~ **Slaughter Animals.** Animals of any kind for immediate slaughter, or those consigned for slaughter within fourteen (14) days of date of shipment. (5-3-03)
- ~~335.~~ **State Animal Health Official.** The Administrator or his designee responsible for disease control and eradication programs. (5-3-03)
- ~~346.~~ **VHSV Positive Area.** Any area or region that has been identified by USDA as affected by VHSV. (4-2-08)

~~357.~~ **Waterfowl.** Domestic fowl that normally swim, such as ducks and geese. (5-3-03)

~~368.~~ **Wildlife.** Any animal generally living in a state of nature except, domestic bison, domestic cervidae, domestic fur bearing animals, and fish. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

300. 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. (4-4-13)

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. Approved Equine Feedinglot Facilities. Equids being fed for slaughter in an equine ~~feeding facility~~ ~~feedlot~~ approved by the Administrator may be exempt from EIA test requirements provided that all horses qualified into the approved facility must be sent directly to slaughter within sixty (60) days. ~~(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)

600. IMPORTATION OF DOMESTIC CERVIDAE.

Domestic cervidae may enter the state of Idaho, by permit, provided: (5-3-03)

01. Certificate of Veterinary Inspection. The cervidae are accompanied by a certificate of veterinary inspection certifying that they have been inspected within thirty (30) days prior to the date of shipment, that they are free from evidence of infectious, contagious, or communicable diseases, or known exposure thereto during the preceding sixty (60) days; and (5-3-03)

02. Meet Testing Requirements. The cervidae shall meet the testing requirements of Section 601. (5-3-03)

03. National CWD Herd Certification Program Participation. All cervidae must originate from a herd that is in good standing and actively participating in the National CWD Herd Certification Program. ()

(BREAK IN CONTINUITY OF SECTIONS)

602. INDIVIDUAL IDENTIFICATION.

Each cervid animal imported shall be individually identified ~~by an approved USDA identification device on a certificate of veterinary inspection issued by the accredited veterinarian who performed any required tests~~ in accordance with the National CWD Herd Certification Program requirements, with two (2) forms of official identification for each animal according to IDAPA 02.04.19, "Rules Governing Domestic Cervidae." ~~(5-3-03)~~()

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.02 - RULES PERTAINING TO THE IDAHO COMMERCIAL FEED LAW

DOCKET NO. 02-0602-1301

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2014 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 25-2710, Idaho Code.

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

To incorporate by reference information and updates contained in the 2014 Official Publication of the Association of American Feed Control Officials (AAFCO) as they pertain to the methodology and practice of conducting regulatory commercial feed registration and label review. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the June 5, 2013 Idaho Administrative Bulletin, [Vol. 13-6, pages 19 and 20](#).

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 commercial feeds. The rule is, however, consistent with national standards by the Association of American Feed Control Officials.

FISCAL IMPACT: The following is a specific 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 2nd day of August, 2013.

Brian J. Oakey, Deputy Director
Idaho State Dept. of Agriculture
Phone: (208) 332-8500
Fax: (208) 334-2170

2270 Old Penitentiary Rd.
P.O. Box 790
Boise, Idaho 83701

DOCKET NO. 02-0602-1301 - 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 13-6, June 5, 2013, pages 19 and 20](#).

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2014 Idaho State Legislature for final adoption.

IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.06.12 - RULES PERTAINING TO THE IDAHO FERTILIZER LAW
DOCKET NO. 02-0612-1301
NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2014 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 following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

To incorporate by reference information and updates contained in the 2014 Official Publication of the Association of American Plant Food Control Officials (AAPFCO) as they pertain to the methodology and practice of conducting regulatory fertilizer registration and label review. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the June 5, 2013 Idaho Administrative Bulletin, [Vol. 13-6, pages 22 and 23](#).

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 commercial fertilizers. The rule is, however, consistent with national standards by the Association of American Plant Food Control Officials.

FISCAL IMPACT: The following is a specific 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 2nd day of August, 2013.

Brian J. Oakey, Deputy Director
Idaho State Dept. of Agriculture
Phone: (208) 332-8500
Fax: (208) 334-2170

2270 Old Penitentiary Rd.
P.O. Box 790
Boise, Idaho 83701

DOCKET NO. 02-0612-1301 - 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 13-6, June 5, 2013, pages 22 and 23.

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2014 Idaho State Legislature for final adoption.

IDAPA 02 - IDAHO STATE DEPARTMENT OF AGRICULTURE
02.06.13 - RULES RELATING TO RAPESEED PRODUCTION
AND ESTABLISHMENT OF RAPESEED DISTRICTS IN THE STATE OF IDAHO

DOCKET NO. 02-0613-1301

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 September 18, 2013.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 rule changes result from an Oilseed Commission meeting on March 21, 2013. The proposed changes would consolidate the various growing districts in the current rule to reflect the current status and practice of growing edible and industrial rapeseed in Idaho.

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 3, 2013, Idaho Administrative Bulletin, [Vol. 13-7, page 25](#). Negotiated Rulemaking was held on July 22 and 25, 2013 in Boise and Lewiston, Idaho.

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 Phone (208) 332-8620.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to Michael Cooper and must be delivered on or before September 25, 2013. Comments can be delivered via email to mike.cooper@agri.idaho.gov or via regular mail to Michael Cooper's attention at the address listed below.

DATED this 2nd day of August, 2013.

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

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0613-1301

050. PRODUCTION DISTRICTS.

01. District I. All land *south of the Canadian border and north of U.S. Interstate 90 in Idaho not listed under District II in Subsection 050.02 of this rule.* (7-1-93)()

~~02. District II. All land south of U.S. Interstate 90 and north of the Clearwater River. (7-1-93)~~

~~03. District III. All land south of the Clearwater River and north of the Salmon River. (7-1-93)~~

04. District IV. All land within the boundaries of Ada, Canyon, Gem, Owyhee (north of Murphy) and Payette counties. (9-1-94)()

~~05. District V. All land within the boundaries of Elmore, Owyhee (south of Murphy), and Washington counties. (9-1-94)~~

~~06. District VI. All land within the boundaries of Blaine, Camas, Cassia, Gooding, Jerome, Lincoln, Minidoka and Twin Falls counties. (9-1-94)~~

~~07. District VII. All land within the boundaries of Bannock, Bear Lake, Bingham, Bonneville, Caribou, Clark, Franklin, Fremont, Jefferson, Madison, Oneida, Power and Teton counties. (9-1-94)~~

051. -- 099. (RESERVED)

100. RESTRICTIONS.

01. Districts ~~I, V, VI, and VII~~. Except as otherwise provided in this rule, *only industrial and* edible types of rapeseed may be planted in Districts ~~I, V, VI, and VII~~. (9-1-94)()

02. District ~~II, III, and IV~~. Except as otherwise provided in this rule, *only industrial types of rapeseed may be planted in District II and III, and* no rapeseed of either variety may be planted in District ~~IV~~. (7-1-93)()

03. ~~Exemptions~~ **Restrictions:** (7-1-93)()

a. Industrial types of rapeseed *may be* planted in Districts ~~I, V, VI, and VII~~ under *must adhere to these following* conditions: (9-1-94)()

i. It is the responsibility of the person planting industrial types of rapeseed in District ~~I, V, and VI~~ to consult with and obtain the written approval from all farmers bordering the fields to be planted with industrial types of rapeseed. (7-1-93)()

ii. Industrial types of rapeseed planted in District ~~I, V, VI, and VII~~ must be at least one (1) mile from a field planted to edible types of rapeseed. (9-1-94)()

~~b. Spring edible types of rapeseed may be planted in Districts II and III, and winter edible types of rapeseed may be planted in District III. Planting of spring and winter edible types of rapeseed are subject to the following conditions: (3-20-97)~~

~~i. It is the responsibility of the person planting spring or winter edible types of rapeseed in Districts II and III to consult with and obtain the written approval from all farmers bordering the fields to be planted with the spring or winter edible type of rapeseed. (3-20-97)~~

~~ii. Spring or winter edible types of rapeseed planted in Districts II and III must be at least one (1) mile~~

~~from a field planted to industrial types of rapeseed.~~

~~(3-20-97)~~

~~e. This amendment to Subsections 100.03.b.i. and 100.03.b.ii. is reasonably necessary to confer benefits to the rapeseed/canola industry. The proposed rule change was requested by farmers in Idaho and Lewis counties. The proposed rule change will enable the farmers to plant the winter edible type of rapeseed. (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. 02-0641-1301

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2014 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 following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

To incorporate by reference information and updates contained in the 2014 Official Publication of the Association of American Plant Food Control Officials (AAPFCO) as they pertain to the methodology and practice of conducting regulatory soil and plant amendment registration and label review. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the June 5, 2013 Idaho Administrative Bulletin, [Vol. 13-6, pages 26 and 27](#).

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 Soil and Plant Amendments. The rule is, however, consistent with national standards by the Association of American Plant Food Control Officials.

FISCAL IMPACT: The following is a specific 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 2nd day of August, 2013.

Brian J. Oakey, Deputy Director
Idaho State Dept. of Agriculture
Phone: (208) 332-8500
Fax: (208) 334-2170

2270 Old Penitentiary Rd.
P.O. Box 790
Boise, Idaho 83701

DOCKET NO. 02-0641-1301 - 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 13-6, June 5, 2013, pages 26 and 27](#).

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2014 Idaho State Legislature for final adoption.

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.03.01 - RULES OF BUILDING SAFETY

DOCKET NO. 07-0301-1301

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, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 18, 2013.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 and amendment of the 2012 editions of the International Residential Code and International Energy Conservation Code was the result of negotiated rulemaking and the deliberations of a collaborative group consisting of members of the building industry, local building officials, code development officials, Board members, and other interested stakeholders. Code amendment proposals submitted to the Board by the collaborative group resulted in the Board's recognition that amending several provisions could save contractors and property owners significant expense without an adverse effect on health or safety. Specifically, amendments to the building code bring it into conformity with existing state laws which allow day care facilities within a residence. Amendments to the residential and energy codes restore many critical provisions back to the levels contained in the 2009 codes, and/or provide more economical alternate methods to ensure compliance with code requirements. All of which was advocated by the collaborative group and is more widely accepted within the industry. This rulemaking would result in the adoption of the 2012 International Residential Code (IRC) and 2012 International Energy Conservation Code (IECC) as building standards within Idaho among all jurisdictions. It would also make further amendments to the 2012 IRC and 2012 IECC related to energy code requirements and alternate methods of compliance, as well as amend the International Building Code (IBC) related to daycare facilities within residences.

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; some increased short-term costs to jurisdictions enforcing the codes for obtaining code materials and training of inspectors. Amendments to the new code result in decreases in costs to builders that offset minor cost increases associated with new provisions contained in the code. However, 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 May 1, 2013 Idaho Administrative Bulletin, [Vol. 13-5, pages 60 and 61](#).

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 and amendment of the 2012 editions of the International Residential Code and International Energy Conservation Code was the result of negotiated rulemaking and the deliberations of a collaborative group consisting of members of the building industry, local building officials, code development officials, Board members, and other interested stakeholders. Code amendment proposals submitted to the Board by the collaborative group resulted in the Board's recognition that amending several provisions could save contractors and property owners significant expense without an adverse effect on health or safety. Section 39-4109, Idaho Code, requires the adoption of the above-

referenced codes for the state of Idaho, and allows the Board to adopt subsequent editions and amendments thereto as it determines necessary.

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 September 25, 2013.

DATED this 13th day of August 2013.

Steve Keys
Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
P. O. Box 83720
Meridian, ID 83720-0048
Phone: (208) 332-8986
Fax: 1-877-810-2840

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 07-0301-1301

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. Pursuant to Section 39-4109, Idaho Code, the effective date of a 2009 any edition of any of the codes adopted in this Section, with or any amendments identified thereto, shall be January 1, 2011 of the succeeding year following legislative approval of the rulemaking establishing the edition or amendment. 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 at <http://www.iccsafe.org>. (3-29-10)()

01. International Building Code. 2012 Edition with the following amendments: (4-4-13)

a. Delete section 305.2.3 and replace with the following: Twelve (12) or fewer children in a dwelling unit. A facility such as the above within a dwelling unit and having twelve (12) or fewer children receiving such day care shall be classified as a Group R-3 occupancy or shall comply with the International Residential Code. ()

b. Delete section 308.6.4 and replace with the following: Persons receiving care in a dwelling unit. A facility such as the above within a dwelling unit and having twelve (12) or fewer children receiving day care or having five (5) or fewer persons receiving custodial care shall be classified as a Group R-3 occupancy or shall comply with the International Residential Code. ()

c. Delete section 310.5 and replace with the following: Residential Group R-3. Residential occupancies where the occupants are primarily permanent in nature and not classified as Group R-1, R-2, R-4, E or I, including: ()

- i. Buildings that do not contain more than two (2) dwelling units: ()
- ii. Boarding houses (nontransient) with sixteen (16) or fewer occupants: ()
- iii. Boarding houses (transient) with ten (10) or fewer occupants: ()
- iv. Care facilities that provide accommodations for five (5) or fewer persons receiving care: ()
- v. Congregate living facilities (nontransient) with sixteen (16) or fewer occupants: ()
- vi. Congregate living facilities (transient) with ten (10) or fewer occupants; or ()
- vii. Dwelling units providing day care for twelve (12) or fewer children. ()
- d. Delete section 310.5.1 and replace with the following: Care facilities within a dwelling. Care facilities for twelve (12) or fewer children receiving day care or for five (5) or fewer persons receiving care that are within a single-family dwelling are permitted to comply with the International Residential Code. ()
- ae. 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. (4-4-13)
- bf. Add the following Delete footnote ~~(g)~~ contained under Table 2902.1 Minimum Number of Required Plumbing Fixtures and replace with the following: ~~(g)~~ For business occupancies, excluding restaurants, and mercantile occupancies with an occupant load of thirty (30) or fewer, service sinks shall not be required. (4-4-13)()
- 02. **International Residential Code.** 200912 Edition with the following amendments: (4-4-13)()
 - a. Delete ~~the~~ exception No. 1 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. Add the following item No. 11 at the end of the "Building" subsection of IRC section R105.2 - Work exempt from permit: Flag poles. ()
 - de. 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)
 - ef. IRC Table R302.1 Exterior Walls -- delete the figures contained in the last column of the table under the heading Minimum Fire Separation Distance for the "Walls" and "Projections" elements, and replace with the following:

Minimum Fire Separation Distance	
Walls (fire-resistance rated):	< Three (3) Feet
Walls (not fire-resistance rated):	≥ Three (3) Feet

Minimum Fire Separation Distance	
Projections (fire-resistance rated):	< Three (3) Feet
Projections (not fire-resistance rated):	≥ Three (3) Feet

(3-29-10)()

fg. 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)

h. Delete IRC section R303.4. ()

gi. 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)

hj. Delete IRC section R313.2. (3-29-10)

ik. Add the following to IRC section R315.23 - 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. (4-4-13)()

jl. Delete IRC section R322.1.10. (3-29-10)

km. Delete IRC section R322.2.2 subparagraph 2.2, and replace with the following: The total net area of all openings shall be at least one (1) square inch (645 mm²) for each square foot (0.093 m²) 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)()

ln. 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. (4-4-13)

o. Chapter 11 [RE] Energy Efficiency - The following sections and tables of chapter 11 shall be amended in accordance with the requirements contained below in Subsection 004.04 of these rules which correspond to the appropriate section: ()

i. Table N1102.1.1 (Table R402.1.1) - Insulation and Fenestration Requirements by Component; ()

ii. Table N1102.1.3 (Table R402.1.3 - Equivalent U-Factors; ()

iii. Table N1102.2.6 (Table R402.2.6) - Steel-Frame Ceiling, Wall and Floor Insulation (R-Value); ()

iv. Section N1102.4.1 (R402.4.1) Building Thermal Envelope; ()

v. Section N1102.4.1.1 (R402.4.1.1) - Insulation; ()

- vi. [Table N1102.4.1.1 \(Table R402.4.1.1\) - Air Barrier and Insulation Installation;](#) ()
 - vii. [Section N1102.4.1.2 \(R402.4.1.2\) Testing Option;](#) ()
 - viii. [Add Section N1102.4.1.3 \(R402.4.1.3\) - Visual Inspection Option;](#) ()
 - ix. [Add Section N1102.6 \(R402.6\) - Residential Log Home Thermal Envelope;](#) ()
 - x. [Add Table N1102.6 \(Table R402.6\) - Log Home Prescriptive Thermal Envelope Requirements by Component; and](#) ()
 - xi. [Section N1104.1 \(R404.1\) - Lighting Equipment.](#) ()
- 03. International Existing Building Code.** 2012 Edition. (4-4-13)
- 04. International Energy Conservation Code.** 2009~~12~~ Edition with the following amendments. (4-7-11)()
- a.** [Delete the values contained in Table R402.1.1 \(Table N1102.1.1\) for climate zone “5 and Marine 4” and climate zone “6” and replace with the following:](#) ()

Table R402.1.1
INSULATION AND FENESTRATION REQUIREMENTS BY COMPONENT

<u>Climate Zone</u>	<u>Fenestration U- Factor</u>	<u>Skylight U-factor</u>	<u>Glazed Fenestration SHGC</u>	<u>Ceiling R-Value</u>	<u>Wood Frame Wall R-Value</u>	<u>Mass Wall R-Value</u>	<u>Floor R-Value</u>	<u>Basement Wall R-Value</u>	<u>Slab R-Value</u>	<u>Crawlspace Wall R-Value</u>
<u>5 and Marine 4</u>	<u>0.35</u>	<u>0.60</u>	<u>NR</u>	<u>38</u>	<u>20 or 13+5^h</u>	<u>13/17</u>	<u>30^g</u>	<u>10/13</u>	<u>10. 2 ft</u>	<u>10/13</u>
<u>6</u>	<u>0.35</u>	<u>0.60</u>	<u>NR</u>	<u>49</u>	<u>20 or 13+5^h</u>	<u>15/19</u>	<u>30^g</u>	<u>15/19</u>	<u>10. 4 ft</u>	<u>10/13</u>

()

- b.** Add the following footnote to the title of Table 402.1.1 - Insulation and Fenestration Requirements by Component: ^k For residential log home building thermal envelope construction requirements see section 402.6. (4-7-11)

- c.** [Delete the values contained in Table R402.1.3 \(Table N1102.1.3\) for climate zone “5 and Marine 4” and climate zone “6” and replace with the following:](#)

Table R402.1.3
EQUIVALENT U-FACTORS

<u>Climate Zone</u>	<u>Fenestration U-factor</u>	<u>Skylight U-factor</u>	<u>Ceiling R-Value</u>	<u>Wood Frame Wall R-Value</u>	<u>Mass Wall R-Value</u>	<u>Floor R-Value</u>	<u>Basement Wall R-Value</u>	<u>Crawlspace Wall R-Value</u>
<u>5 and Marine 4</u>	<u>0.35</u>	<u>0.60</u>	<u>0.030</u>	<u>0.057</u>	<u>0.082</u>	<u>0.033</u>	<u>0.059</u>	<u>0.065</u>
<u>6</u>	<u>0.35</u>	<u>0.60</u>	<u>0.026</u>	<u>0.057</u>	<u>0.060</u>	<u>0.033</u>	<u>0.050</u>	<u>0.065</u>

()

- d.** Delete Table R402.2.6 (Table N1102.2.6) and replace with the following:

TABLE R402.2.6
STEEL-FRAME CEILING, WALL AND FLOOR INSULATION
(R-VALUE)

WOOD FRAME R-VALUE REQUIREMENT	COLD-FORMED STEEL EQUIVALENT R-VALUE^a
Steel Truss Ceilings	
R-30	R-38 or R-30 + 3 or R-26 + 5
R-38	R-49 or R-38 + 3
R-49	R-38 + 5
Steel Joist Ceilings	
R-30	R-38 in 2 x 4 or 2 x 6 or 2 x 8 R-49 in any framing
R-38	R-49 in 2 x 4 or 2 x 6 or 2 x 8 or 2 x 10
Steel-Framed Wall	
R-13	R-13 + 5 or R-15 + 4 or R-21 + 3 or R-0 + 10
R-19	R-13 + 9 or R-19 + 8 or R-25 + 7
R-21	R-13 + 10 or R-19 + 9 or R-25 + 8
Steel Joist Floor	
R-13	R-19 in 2 x 6 R-19 + 6 in 2 x 8 or 2 x 10
R-19	R-19 + 6 in 2 x 6 R-19 + 12 in 2 x 8 or 2 x 10
<p><u>a. Cavity insulation R-value is listed first, followed by continuous insulation R-value.</u> <u>b. Insulation exceeding the height of the framing shall cover the framing.</u></p>	

()

- e.** Delete section 402.4.1 (N1102.4.1) and replace with the following: Building thermal envelope. The building thermal envelope shall comply with sections R402.1.1 and either section R402.4.1.2 or R402.4.1.3. The sealing methods between dissimilar materials shall allow for differential expansion and contraction. ()

- f.** Delete section 402.4.1.1 (N1102.4.1.1) and replace with the following: Installation. The components of the building thermal envelope as listed in Table R402.4.1.1 shall be installed in accordance with the manufacturer’s instructions and the criteria listed in Table R402.4.1.1, as applicable to the method of construction. ()

- g.** Delete the criteria requirement for the “Fireplace” component of Table R402.4.1.1 (Table N1102.4.1.1) - Air Barrier and Insulation Installation, and replace with the following: An air barrier shall be installed on fireplace walls. ()

- h.** Delete section 402.4.1.2 (N1102.4.1.2) and replace with the following: Testing option. Building envelope tightness and insulation installation shall be considered acceptable when tested air leakage is less than seven

(7) air changes per hour (ACH) when tested with a blower door at a pressure of 33.5 psf (50 Pa). Testing shall occur after rough in and after installation of penetrations of the building envelope, including penetrations for utilities, plumbing, electrical, ventilation and combustion appliances. During testing: ()

- i. Exterior windows and doors, fireplace and stove doors shall be closed, but not sealed: ()
- ii. Dampers shall be closed, but not sealed, including exhaust, intake, makeup air, backdraft and flue dampers: ()
- iii. Interior doors shall be open: ()
- iv. Exterior openings for continuous ventilation systems and heat recovery ventilators shall be closed and sealed: ()
- v. Heating and cooling system(s) shall be turned off: ()
- vi. HVAC ducts shall not be sealed; and ()
- vii. Supply and return registers shall not be sealed. ()

i. Add the following as section 402.4.1.3 (N1102.4.1.3): Visual inspection option. Building envelope tightness and insulation installation shall be considered acceptable when the items listed in Table 402.4.1.1, applicable to the method of construction, are field verified. Where required by code official an approved party independent from the installer of the insulation shall inspect the air barrier and insulation. ()

bj. 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. (4-4-13)

ek. Add the following section: R402.6 (N1102.6) 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)

el. Add Table R402.6 (Table N1102.6) 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 R402.6
LOG HOME PRESCRIPTIVE THERMAL ENVELOPE REQUIREMENTS BY COMPONENT

For SI: 1 foot = 304.8 mm.

CLIMATE ZONE	FENESTRATION U-FACTOR ^a	SKYLIGHT U-FACTOR	GLAZED FENESTRATION SHGC	CEILING R-VALUE	Min. Average LOG Size in inches	FLOOR R-VALUE	BASEMENT WALL R-VALUE ^d	SLAB R-VALUE & DEPTH ^b	CRAWL SPACE WALL R-VALUE ^d
5, 6 - High efficiency equipment path ^c	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)()

m. Delete section R404.1 (N1104.1) and replace with the following: Lighting equipment (Mandatory). A minimum of fifty percent (50%) of the lamps in permanently installed lighting fixtures shall be high-efficacy lamps or a minimum of fifty percent (50%) of the permanently installed lighting fixtures shall contain only high efficacy lamps. ()

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. 07-0301-1302

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, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 18, 2013.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 of the 2012 edition of the International Residential Code was the result of negotiated rulemaking and the deliberations of a collaborative group consisting of members of the building industry, local building officials, code development officials, Board members, and other interested stakeholders. This amendment will create more flexibility in building residential structures by adding an alternate method contractors may use when bracing a one and two-family dwelling residential wall by allowing such to be braced in accordance with the APA–Engineered Wood Association publication SR-102. This rulemaking would amend the International Residential Code by adding an alternate method of bracing walls in one and two-family dwellings by including the most recent edition of the APA System Report SR-102 as an additional standard.

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 fiscal impact to the General Fund or to the Agency, but may in certain situations result in savings to the owner or builder.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted under Docket No. 07-0301-1301. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 1, 2013 Idaho Administrative Bulletin, [Vol. 13-5, pages 60 and 61](#).

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 of the 2012 edition of the International Residential Code was the result of negotiated rulemaking and the deliberations of a collaborative group consisting of members of the building industry, local building officials, code development officials, Board members, and other interested stakeholders. This amendment will create more flexibility in building residential structures by adding an alternate method contractors may use when bracing a one and two-family dwelling residential wall by allowing such to be braced in accordance with the APA–Engineered Wood Association publication SR-102. This rulemaking would amend the International Residential Code by adding an alternate method of bracing walls in one and two-family dwellings by including the most recent edition of the APA System Report SR-102 as an additional standard. Section 39-4109, Idaho Code, requires the adoption of the above-referenced codes for the state of Idaho, and allows the Board to adopt subsequent editions and amendments thereto as it determines necessary.

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 September 25, 2013.

DATED this 13th day of August 2013.

Steve Keys
Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
P. O. Box 83720
Meridian, ID 83720-0048
Phone: (208) 332-8986
Fax: 1-877-810-2840

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 07-0301-1302

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 at <http://www.iccsafe.org>. (3-29-10)

01. International Building Code. 2012 Edition with the following amendments: (4-4-13)

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. (4-4-13)

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. (4-4-13)

02. International Residential Code. 2009~~12~~ Edition with the following amendments: ~~(4-4-13)~~()

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. (4-4-13)

j. Delete IRC section R322.1.10. (3-29-10)

k. 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 mm²) for each square foot (0.093 m²) 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 IRC section R602.10 and replace with the following: Wall bracing. Buildings shall be braced in accordance with this section or, when applicable section R602.12, or the most current edition of APA System Report SR-102 as an alternate method. Where a building, or portion thereof, does not comply with one (1) or more of the bracing requirements in this section, those portions shall be designated and constructed in accordance with section R301.1. ()

m. 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. (4-4-13)

- 03. International Existing Building Code.** 2012 Edition. (4-4-13)
- 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: ^k 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. (4-4-13)
- c.** 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)
- d.** 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 ^a	SKYLIGHT U-FACTOR	GLAZED FENESTRATION SHGC	CEILING R-VALUE	Min. Average LOG Size in inches	FLOOR R-VALUE	BASEMENT WALL R-VALUE ^d	SLAB R-VALUE & DEPTH ^b	CRAWL SPACE WALL R-VALUE ^d
5, 6 - High efficiency equipment path ^c	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. 07-0301-1303

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, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 18, 2013.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 of the 2012 edition of the International Residential Code was the result of negotiated rulemaking and the deliberations of a collaborative group consisting of members of the building industry, local building officials, code development officials, Board members, and other interested stakeholders. This amendment will allow owner-occupied lodging house occupancies (bed and breakfasts) with three or fewer guestrooms to be constructed or remodeled in accordance with the Residential Code instead of the commercial Building Code, and allow such to be operated without the installation of fire sprinklers. It will, however, require that smoke and carbon monoxide alarms be installed. This is expected to be a cost saving to owners of such occupancies who reside in them, relieving them from having to install fire sprinklers and comply with other requirements of the commercial Building Code if they are remodeled. This rulemaking would amend the International Residential Code to allow owner-occupied lodging house occupancies (bed and breakfasts) with three or fewer guestrooms to be constructed or remodeled in accordance with the Residential Code instead of the commercial Building Code. It also would allow such bed and breakfasts to be operated without the installation of fire sprinklers, but require that smoke and carbon monoxide alarms are installed.

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. Amendment to the code would result in decreases in cost to operators of owner-occupied lodging houses (bed and breakfast property) as a result of the elimination of fire sprinkler requirements in those with three or fewer guestrooms. No significant additional costs of conformance with the newer edition of the code were brought forward in discussions before the board.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted under Docket No. 07-0301-1301. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 1, 2013 Idaho Administrative Bulletin, [Vol. 13-5, pages 60 and 61](#).

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 of the 2012 edition of the International Residential Code was the result of negotiated rulemaking and the deliberations of a collaborative group consisting of members of the building industry, local building officials, code development officials, Board members, and other interested stakeholders. This amendment will allow owner-occupied lodging house occupancies (bed and breakfasts) with three or fewer guestrooms to be constructed or remodeled in accordance with the Residential Code instead of the commercial Building Code, and allow such to be operated without the installation of fire sprinklers. It will; however, require that smoke and carbon monoxide alarms be installed. This is expected to be a cost saving to owners of such occupancies who reside in them, relieving them from having to install fire sprinklers and comply with other requirements of the commercial Building Code if they are remodeled. Section 39-4109, Idaho Code, requires the adoption of the above-referenced codes for the state of Idaho, and allows the Board to adopt subsequent editions and amendments thereto as it determines necessary.

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 September 25, 2013.

DATED this 13th day of August 2013.

Steve Keys
Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
P. O. Box 83720
Meridian, ID 83720-0048
Phone: (208) 332-8986
Fax: 1-877-810-2840

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 07-0301-1303

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 at <http://www.iccsafe.org>. (3-29-10)

01. International Building Code. 2012 Edition with the following amendments: (4-4-13)

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. (4-4-13)

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. (4-4-13)

02. International Residential Code. 2009~~12~~ Edition with the following amendments: ~~(4-4-13)~~()

a. Delete ~~the~~ exception No. 1 contained under IRC section R101.2 - Scope. ~~(4-7-11)~~()

b. Delete exception No. 2 contained under IRC section R101.2 - Scope, and replace with the following: Owner-occupied lodging houses with three (3) or fewer guestrooms shall be permitted to be constructed in accordance with the International Residential Code for One- and Two-family Dwellings. Such occupancies shall be required to install smoke alarms and carbon monoxide alarms in accordance with sections R314 and R315

respectively of the International Residential Code for One- and Two-family Dwellings. ()

bc. 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)

ed. 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)

de. 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)

ef. 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)

fg. 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)

gh. 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)

hi. Delete IRC section R313.2. (3-29-10)

ji. 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. (4-4-13)

jk. Delete IRC section R322.1.10. (3-29-10)

kl. 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 mm²) for each square foot (0.093 m²) 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)

m. 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. (4-4-13)

03. International Existing Building Code. 2012 Edition. (4-4-13)

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: ^k. 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. (4-4-13)

c. 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)

d. 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 ^a	SKYLIGHT U-FACTOR	GLAZED FENESTRATION SHGC	CEILING R-VALUE	Min. Average LOG Size in inches	FLOOR R-VALUE	BASEMENT WALL R-VALUE ^d	SLAB R-VALUE & DEPTH ^b	CRAWL SPACE WALL R-VALUE ^d
5, 6 - High efficiency equipment path ^c	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. 07-0301-1304

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, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 18, 2013.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 of the 2012 edition of the International Residential Code was the result of negotiated rulemaking and the deliberations of a collaborative group consisting of members of the building industry, local building officials, code development officials, Board members, and other interested stakeholders. This amendment will eliminate a new provision of the IRC which requires floors in residences not already fire resistance rated to be enhanced with an additional structural fire protection on the underside of the floor assembly. This will be a cost saving to builders and property owners by eliminating the additional expense of installing fire protection membranes on the floor assemblies. The existence of the original provision in the Residential Code prior to amendment is primarily due to the short amount of time that may potentially exist for a fire to cause failure in manufactured I-joists which are commonly installed in residences. It provided additional protection to firefighters and officials who may be present to provide fire and life-safety services during a fire. However, several exceptions to the additional flooring protection requirement are already contained under the existing code provision. This rulemaking would amend the International Residential Code by deleting a section, including the exceptions thereto, that requires floor assemblies in one- and two-family dwellings which are not already fire-resistance rated to be enhanced by installing additional wallboard, wood or equivalent fire protection to the underside of the floor.

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 fiscal impact to the General Fund or the jurisdictions enforcing building codes, including the Division. Construction savings to builders and property owners was identified by proponents of the amendment.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted under Docket No. 07-0301-1301. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 1, 2013 Idaho Administrative Bulletin, [Vol. 13-5, pages 60 and 61](#).

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 of the 2012 edition of the International Residential Code was the result of negotiated rulemaking and the deliberations of a collaborative group consisting of members of the building industry, local building officials, code development officials, Board members, and other interested stakeholders. This amendment will eliminate a new provision of the IRC which requires floors in residences not already fire resistance rated to be enhanced with an additional structural fire protection on the underside of the floor assembly. This will be a cost saving to builders and property owners by eliminating the additional expense of installing fire protection membranes on the floor assemblies. The existence of the original provision in the Residential Code prior to amendment is primarily due to the short amount of time that may potentially exist for a fire to cause failure in manufactured I-joists which are commonly installed in residences. It provided additional protection to firefighters and officials who may be present to

provide fire and life-safety services during a fire. However, several exceptions to the additional flooring protection requirement are already contained under the existing code provision. Section 39-4109, Idaho Code, requires the adoption of the above-referenced codes for the state of Idaho, and allows the Board to adopt subsequent editions and amendments thereto as it determines necessary.

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 September 25, 2013.

DATED this 13th day of August 2013.

Steve Keys
Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
P. O. Box 83720
Meridian, ID 83720-0048
Phone: (208) 332-8986
Fax: 1-877-810-2840

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 07-0301-1304

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 at <http://www.iccsafe.org>. (3-29-10)

01. International Building Code. 2012 Edition with the following amendments: (4-4-13)

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. (4-4-13)

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. (4-4-13)

02. International Residential Code. 2009~~12~~ Edition with the following amendments: ~~(4-4-13)~~()

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. (4-4-13)

j. Delete IRC section R322.1.10. (3-29-10)

k. 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 mm²) for each square foot (0.093 m²) 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 IRC section R501.3 and its exceptions. ()
- m.** 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. (4-4-13)
- 03.** **International Existing Building Code.** 2012 Edition. (4-4-13)
- 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: ^k. 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. (4-4-13)
 - c.** 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:
 - 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)
 - d.** 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 ^a	SKYLIGHT U-FACTOR	GLAZED FENESTRATION SHGC	CEILING R-VALUE	Min. Average LOG Size in inches	FLOOR R-VALUE	BASEMENT WALL R-VALUE ^d	SLAB R-VALUE & DEPTH ^b	CRAWL SPACE WALL R-VALUE ^d
5, 6 - High efficiency equipment path ^c	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

07.03.11 - RULES GOVERNING MANUFACTURED/MOBILE HOME INDUSTRY LICENSING

DOCKET NO. 07-0311-1301

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 44-2104, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 18, 2013.

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

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

In the 2013 legislative session, the requirement that individuals and companies who provide service and repair work on manufactured and mobile homes was eliminated from the manufactured home licensing provisions of the Idaho Code. Amendments in this rulemaking will eliminate the corresponding rule requirements for manufactured and mobile home service companies to obtain a license to perform such work. Additionally, several definitions and terms contained in the rule chapter are amended to be more consistent with their statutory definitions.

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, and a \$2K reduction in revenue to the Manufactured Housing account. Favorable impact on individuals who service manufactured or mobile homes and will not be required to obtain a license.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rulemaking is simple in 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 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 September 25, 2013.

DATED this 16th day of August 2013.

Steve Keys
Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
P. O. Box 83720
Meridian, ID 83720-0048
Phone: (208) 332-8986
Fax: 1-877-810-2840

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 07-0311-1301

000. LEGAL AUTHORITY.

The administrator of the Idaho Division of Building Safety and the Idaho Manufactured Housing Board are authorized to promulgate rules necessary to implement the provisions of Title 44, Chapters 21 and 22, Idaho Code, including the establishment of a mandatory statewide manufactured home setup code, as well as to define and prohibit deceptive practices, and to establish administrative penalties. (3-29-10)

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 07.03.11, "Rules Governing Manufactured/Mobile Home Industry Licensing," Division of Building Safety. (3-24-05)

02. Scope. These rules apply to persons engaged in the business of manufacturing, selling, or installing ~~or servicing~~ manufactured or mobile homes for purposes of human habitation (living and sleeping) in the state of Idaho. (~~3-24-05~~)()

002. WRITTEN INTERPRETATIONS.

The Division may from time to time provide legal opinions regarding these rules. To the extent not privileged, these documents will be made available for inspection at the Division's main office, 1090 E. Watertower ~~Street~~, Suite 150, Meridian, Idaho 83642. (~~3-24-05~~)()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

For the purposes of these rules, the following terms will be used, as defined below: (5-25-94)

01. Administrator. The administrator of the Division of Building Safety of the state of Idaho. (3-24-05)

02. Board. The Manufactured Housing Board. The composition and duties of the Board are set forth at Section 44-2104, Idaho Code. (3-29-10)

03. Bond. The performance bond required by Section 44-2103, Idaho Code. (5-25-94)

04. Branch Office. An enclosed structure accessible and open to the public, at which the business of the manufactured/mobile home retailer is conducted simultaneously with and physically separated from his principal place of business. There shall be displayed on the exterior a sign permanently affixed to the land or building with letters clearly visible to the major avenue of traffic. The sign shall provide the business name of the retailer. (3-29-10)

05. Business. Occupation, profession, or trade. (5-25-94)

06. Deceptive Practice. Intentionally publishing or circulating any advertising concerning mobile or manufactured homes which: (5-25-94)

a. Is misleading or inaccurate in any material respect; (3-29-10)

b. Misrepresents any of the products or services sold or provided by a manufacturer, manufactured/mobile home retailer, salesman, or ~~service or~~ installation company. (~~3-29-10~~)()

- 07. Division.** The Division of Building Safety for the state of Idaho. (5-25-94)
- 08. Installer.** A person who owns a business which installs manufactured/mobile homes at the sites where they are to be occupied by the consumer. The term does not include the purchaser of a manufactured/mobile home or a manufactured/mobile home retailer who does not install manufactured/mobile homes. A retailer who does install manufactured/mobile homes is an installer. The term also does not include concrete contractors or their employees. (3-29-10)
- 09. Installation.** The term includes “setup” and is the complete operation of fixing in place a manufactured/mobile home for occupancy. (5-25-94)
- 10. Manufactured Home.** A structure, constructed after June 15, 1976, in accordance to accordance with the HUD manufactured home construction and safety standards, and is transportable in one (1) or more sections, which:
(3-24-05)
- a- fin the traveling mode, is eight (8) body feet or more in width or is forty (40) body feet or more in length; or (5-25-94)
 - b- When erected on site, is three hundred twenty (320) or more square feet in size; and which (5-25-94)
 - c- fis built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities; and (5-25-94)
 - d- fincludes the plumbing, heating, air conditioning, and electrical systems contained therein; (5-25-94)
 - e- Except that such term shall include any structure which meets all the requirements of this definition subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of Housing and Urban Development and complies with the standards established under 42 U.S.C. Section 5401, et seq. (5-25-94)()
- 11. Manufactured Home Retailer.** Except as otherwise provided in these rules: (3-29-10)
- a.** Any person engaged in the business of selling or exchanging new and used units; or (5-25-94)
 - b.** Any person or who buys, sells, lists, or exchanges three (3) or more new and used units in any one (1) calendar year. (5-25-94)
- 12. Manufactured/Mobile Home Salesman.** ~~Except as otherwise provided in these rules:~~ Any person employed by a manufactured/mobile home ~~dealer~~ retailer or resale broker for a salary, commission, or compensation of any kind to sell, list, purchase, or exchange or to negotiate for the sale, listing, purchase, or exchange of new, used, brokered, or third-party owned units, except as otherwise provided in Title 44, Chapter 21, Idaho Code. (3-24-05)()
- ~~**13. Manufactured/Mobile Home Service Company.** Any person who owns or is the responsible managing employee of a business that has grossed more than two thousand five hundred dollars (\$2,500) in any one (1) year from the service of manufactured or mobile homes. The term does not include a manufactured/mobile home retailer or owner. The term also does not include licensed electrical or plumbing contractors, carpet and vinyl installers, painting or concrete contractors, tape and texture installers, cabinet installers, public utilities, or the employees of any of the occupations listed in this sentence. Finally, the term does not include manufactured/mobile home installers. (3-29-10)~~
- 143. Manufacturer.** Any person engaged in the business of manufacturing ~~facility which has been certified by the U.S. Department of Housing and Urban Development (HUD) to construct prefabricated~~ manufactured homes in accordance with the Manufactured Housing Construction Safety Standards Act of 1974 that are offered for sale, lease, or exchange in the state of Idaho. (5-25-94)()

154. Mobile Home. A factory-assembled structure similar to a manufactured home, but built to a mobile home code or structures generally constructed prior to June 15, 1976, the date of enactment of the Federal Manufactured Housing and Safety Standards Act (HUD Code), and equipped with the necessary service connections and made so as to be readily movable as a unit or units on their own running gear and designed to be used as a dwelling unit or units with or without a permanent foundation. (5-25-94)()

165. Person. A natural person, corporation, partnership, trust, society, club, association, or other organization. (5-25-94)

176. Principal Place of Business. ~~An enclosed structure accessible and open to the public~~ The primary physical location at which the business of a manufactured home retailer or resale broker is lawfully conducted. Each of the following requirements ~~are~~ shall be met to qualify as the principal place of business: (5-25-94)()

a. The business of the manufactured ~~or~~ mobile home retailer or resale broker is lawfully conducted here; (3-29-10)()

b. The office or offices of the retailer or resale broker is or are located here; (3-29-10)()

c. The public may contact the retailer, resale broker, or salesman here; (3-29-10)()

d. The offices are accessible and open to the public; and ()

~~de.~~ **de.** The greatest portion of the retailer's business is conducted here. The books and other records of a retailer must be kept and maintained at the retailer's principal place of business and be open to inspection during normal business hours by any authorized agent of the Division. Moreover, there shall be displayed on the exterior a sign permanently affixed to the land or building with letters clearly visible to the major avenue of traffic. The sign shall provide the business name of the retailer. (3-29-10)

187. Responsible Managing Employee (RME). The person designated by the employer to supervise other employees, either personally or through others. (5-25-94)

~~19. Service. Service includes, but is not limited to, the installation or repair of awnings, roofing, skirting, siding, remodeling, material alterations, attached carports or decks, on or in manufactured/mobile homes.~~ (5-25-94)

~~20~~**18. Unit.** A mobile or manufactured home. (5-25-94)

~~21~~**19. Used Manufactured Home or Mobile Home.** A manufactured home or mobile home, respectively, which has been: (5-25-94)

a. Sold, rented, or leased and occupied prior to or after the sale, rental, or lease; or (5-25-94)

b. Registered with or been the subject of a certificate of title issued by the Idaho Department of Transportation or the appropriate authority of any state, the District of Columbia, or foreign state or country. (5-25-94)

011. (RESERVED)

012. LICENSE REQUIRED.

It shall be unlawful to engage in business as a manufacturer, manufactured/mobile home retailer, resale broker, manufactured/mobile home salesman, responsible managing employee, or ~~manufactured/mobile home service company or~~ installer without being duly licensed by the Division pursuant to Title 44, Chapter 21, Idaho Code, and these rules. No issued licenses are transferable. (3-29-10)()

01. Minimum Age Requirement. No license will be issued to a person under eighteen (18) years of age at the time of license application. (5-25-94)

02. Designated License Holder. Any applicant for a license under these rules who is not a natural person must designate a natural person to be license holder and represent the corporation, partnership, trust, society, club, association, or other organization for all licensing purposes under these rules including, but not limited to, testing and education. (3-24-05)

a. The authorization to act as designated license holder must be in writing, signed by the applicant and the person designated, and filed with the Division along with the application. (5-25-94)

b. Any person designated under Subsection 012.02 of these rules shall represent one (1) applicant only, and shall immediately notify the Division in writing if his working relationship with the applicant has been terminated. The license will be issued in the name of the designated license holder with the name of the organization he represents also noted on the license. The license holder shall be considered by the Division to be the licensee, even if the license holder is the designated representative of an organization. (5-25-94)

c. The applicant and the person designated under Subsection 012.02 of these rules agree by acceptance of the designation that the designated person shall act as agent of the applicant for all purposes under Title 44, Chapters 21 and 22, Idaho Code, and all rules promulgated thereunder. (5-25-94)

03. Proof of License. Proof of the existence of any license issued pursuant to these rules shall be carried upon the person of the responsible managing employee or supervisor of any installation ~~or any person who is personally involved with the service of any manufactured/mobile home~~ at all times during the performance of the ~~service or~~ installation work. Such proof shall be furnished upon demand of any person. Moreover, any license issued to a manufactured/mobile home retailer, resale broker, responsible managing employee, or salesman must be posted in a conspicuous place on the business premises of the employer for whom the holder of the license is licensed. The license of a manufacturing facility or branch office shall also be posted in a conspicuous place at the location licensed. ~~(3-29-10)()~~

04. Real Estate Brokers. Licensed real estate brokers or real estate salesmen representing licensed real estate brokers shall not be required to obtain a license under these rules in order to sell or lease a used unit that is currently carried on the tax rolls as personal property and that otherwise falls within the exemption contained in Section 44-2102(2), Idaho Code. (3-24-05)

05. License for Manufacturers. In order to engage in business in the state of Idaho or to be entitled to any other license or permit required by these rules each manufacturer must be licensed by the Division. (3-24-05)

06. License for Branch Office of Manufactured/Mobile Home Retailer or Resale Broker. (3-29-10)

a. The Division shall require as a condition of licensing and bonding any information it deems necessary for each location where a manufactured/mobile home retailer or resale broker maintains a branch office. The mere listing of manufactured/mobile homes for sale does not constitute a branch office, but the use of a mobile home park or a state sales office by a licensee for the sale or offering for sale of manufactured/mobile homes does constitute the maintenance of a branch office. A branch office manager may not manage more than one (1) branch office. (3-29-10)

b. To open a branch office, a retailer or resale broker must: obtain a license from the Division to operate the branch office; and provide for direct supervision of the branch office, either by himself or by employing a branch office manager. (3-29-10)

c. If the branch office is closed, the retailer or resale broker shall immediately deliver the license to the Division. (3-29-10)

07. License to Engage in Business as Manufactured/Mobile Home Retailer, Resale Broker, Manufacturer, ~~Service Company,~~ or Installer; Application; Bond; Issuance, Expiration, and Renewal. ~~(3-29-10)()~~

a. Applications for a manufacturer's, retailers, resale brokers, ~~service company~~ or installer's license must be filed upon forms supplied by the Division, and the applicant shall furnish: (3-29-10)

i. Any proof the Division may deem necessary that the applicant is a manufacturer, retailer, resale broker, ~~service company~~ or installer; (~~3-29-10~~)()

ii. Any proof the Division may require that the applicant has a principal place of business; (5-25-94)

iii. Any proof the Division may require of the applicant's good character and reputation and of his fitness to engage in the activities for which the license is sought; (5-25-94)

iv. In the case of a retailer in new manufactured homes, an instrument in the form prescribed by the Division executed by or on behalf of the manufacturer certifying that the applicant is an authorized franchise dealer for the make concerned; (3-29-10)

v. A reasonable fee and proof of bond fixed by rule; and (5-25-94)

vi. In the case of a retailer, resale broker, ~~service company~~, or installer, proof of passing the examination required by these rules. (~~3-29-10~~)()

b. Within thirty (30) days after receipt of a completed application, the Division shall issue or deny the license. (5-25-94)

c. Each license is valid for a period of one (1) year from the date of issuance and may be renewed for like consecutive period upon application to and approval by the Division. (5-25-94)

d. If any installer's ~~or service company's~~ working relationship with his employer is terminated, the employer shall immediately deliver the license of the terminated installer ~~or service company~~ to the Division. (~~5-25-94~~)()

08. License for Manufactured/Mobile Home Salesman. (5-25-94)

a. A person shall not act as a salesman in this state for a person who sells or leases any manufactured/mobile home subject to the provisions of Title 44, Chapters 21 or 22, Idaho Code, without having first received a license from the Division. Before issuing such a license, the Division shall require: (1) an application, signed by the applicant and verified by his employer, stating that he desires to act as a salesman and providing his residential address and the name and address of his employer; (2) a statement as to whether any previous application of the applicant has been denied or license revoked; (3) payment of the license fee established by rule; and (4) any other relevant information the Division deems necessary. (5-25-94)

b. Within thirty (30) days after receipt of a completed application, the Division shall issue or deny the license. (5-25-94)

c. Each license is valid for a period of one (1) year from the date of issuance and may be renewed for like consecutive period upon application to and approval by the Division. (5-25-94)

d. A person licensed pursuant to Subsection 012.08 of these rules shall not engage in sales activity other than for the account of, or for and on behalf of, a single employer who is a licensed retailer or resale broker. (3-29-10)

e. If a salesman ceases to be employed by a licensed retailer or resale broker, his license to act as a salesman is automatically suspended and his right to act in that capacity immediately ceases. He shall not engage in such activity until reemployed by a licensed retailer or resale broker. If the salesman's working relationship with his employer is terminated, the employer shall immediately deliver his license to the Division. (3-29-10)

09. License for Responsible Managing Employee. (5-25-94)

- a.** A person shall not act as a responsible managing employee for an installer ~~or service company~~ without first having been issued a license by the Division. Before issuing such a license the Division shall require: (3-29-10)()
- i.** An application, signed by the applicant and verified by his employer, stating that he desires to act as a responsible managing employee and providing his residential address and the name and address of his employer; (5-25-94)
- ii.** A statement as to whether any previous application of the applicant has been denied or license revoked; (5-25-94)
- iii.** Payment of the license fee established by rule; and (5-25-94)
- iv.** Any other relevant information the Division deems necessary. (5-25-94)
- b.** Within thirty (30) days after receipt of a completed application, the Division shall issue or deny the license. (5-25-94)
- c.** Each license is valid for a period of one (1) year from the date of issuance and may be renewed for like consecutive period upon application to and approval by the Division. (5-25-94)
- d.** A person licensed pursuant to Subsection 012.09 of these rules shall not engage in such activity other than for the account of, or for and on behalf of, a single employer who is a licensed ~~service company or~~ installer. (5-25-94)()
- e.** If a responsible managing employee ceases to be employed by an installer ~~or service company~~, his license to act as a responsible managing employee is automatically suspended and his right to act in that capacity immediately ceases. He shall not engage in such activity until reemployed by a licensed installer ~~or service company~~. (3-29-10)()
- f.** If the responsible managing employee's working relationship with his employer is terminated, the employer shall immediately deliver his license to the Division. (5-25-94)

013. THE DIVISION'S MAILING ADDRESS.

Any correspondence or notices required by these rules or Title 44, Chapters 21 or 22, Idaho Code, shall be addressed to the Division of Building Safety, 1090 E. Watertower Street, Suite 150 Meridian, Idaho 83642. (3-24-05)()

014. PROOF OF EDUCATION REQUIRED.

01. Satisfactory Proof for Initial Application Submission. An application for a license as a manufactured/mobile home installer must include proof satisfactory to the Division that the applicant has completed the following number of hours of initial education in order to be approved: (4-7-11)

a. Installers, and ~~dealers~~ retailers who are installers: eight (8) hours. (4-7-11)()

b. The course of initial education must be approved by the Division and shall include information relating to the provisions of these rules, Title 44, Chapters 21 and 22, Idaho Code, and the Manufactured Housing Construction Safety Standards Act of 1974. (4-7-11)

02. Satisfactory Proof for License Renewal. The Division shall not renew any installer license, or ~~dealer~~ retailer license of any dealer who is also an installer, issued pursuant to Title 44, Chapters 21 or 22, Idaho Code, or these rules until the licensee has submitted proof satisfactory to the Division that he has, during one (1) year immediately preceding the renewal of the license, completed at least four (4) hours of continuing education. (4-7-11)()

03. Continuing Education Course. The course of continuing education must be approved by the Division and shall include information relating to the following: (4-7-11)

- a. Manufactured housing or mobile home parks which will enable a person to give better service to the members of the general public and tenants of manufactured/mobile home parks; (4-7-11)
- b. The construction, including components and accessories, rebuilding, servicing, installation, or sale of manufactured/mobile homes; (4-7-11)
- c. Legislative issues concerning manufactured/mobile home housing and manufactured/mobile home parks, including pending and recently enacted state or federal legislation; and (4-7-11)
- d. These rules, Title 44, Chapters 21 or 22, Idaho Code, and the Manufactured Housing Safety Standards Act of 1974. (4-7-11)

015. EXAMINATION OF APPLICANT FOR LICENSE.

01. Required Examinations. Effective January 1, 1995, the Division shall require a written examination of each applicant for a license, other than a license being renewed, as a manufactured/mobile home retailer, resale broker, ~~service company~~ or installer. The examination shall include, but may not be limited to, the following subjects: Title 44, Chapters 21 and 22, Idaho Code; these rules and IDAPA 07.03.12, "Rules Governing Manufactured or Mobile Home Installations"; and the Manufactured Housing Construction Safety Standards Act of 1974. To avoid the requirement of an examination and be considered a renewal, any licensee must renew his license within six (6) months of its expiration date. (3-29-10)()

02. Approval of Examination and Grade. Examinations for all classifications under these rules shall be approved by the Division and the Board. No license shall be issued unless the applicant receives a final grade of seventy percent (70%) or higher. (5-25-94)

03. Retesting. If an applicant for a license fails the written examination offered by the Division twice, he must wait at least thirty (30) days before retesting. (5-25-94)

016. DISCIPLINARY ACTION AGAINST LICENSEES.

The Division may deny, suspend, refuse to renew, or revoke any license issued under Title 44, Chapter 21, Idaho Code, or these rules or reissue the license subject to reasonable conditions upon any of the following grounds: (3-24-05)

01. Violation of Rules and Statutes. For any willful or repeated violation of these rules, IDAPA 07.03.12, "Rules Governing Manufactured or Mobile Home Installations," or Title 44, Chapters 21 or 22, Idaho Code. (3-29-10)

02. Failure to Have Principal Place of Business. With regards only to a manufactured/mobile home retailer or resale broker, failure of the applicant or licensee to have a principal place of business. (3-29-10)

03. Revocation of License. The revocation of the license of the employer of a responsible managing employee or salesman is grounds for the revocation of the license of the installer, responsible managing employee or salesman. (3-29-10)

04. False Information. Material misstatement in the application or otherwise furnishing false information to the Division. (5-25-94)

05. Proof of Employment. Failure of a salesman or applicant for licensing as a salesman to establish by proof satisfactory to the Division that he is employed by a licensed retailer or resale broker. (3-29-10)

06. Disclosing Contents of Examination. Obtaining or disclosing the contents of an examination given by the Division. (5-25-94)

07. Deceptive Practice. The intentional publication, circulation, or display of any advertising which constitutes a deceptive practice as that term is defined in Subsection 010.06 of these rules. (3-24-05)

- 08. Failure to Provide Business Name.** Failure to include in any advertising the name of the licensed retailer, resale broker, ~~service company~~, or installer, or the name under which he is doing business. ~~(3-29-10)~~()
- 09. Encouraging Falsification.** Intentionally inducing an applicant or licensee to falsify his credit application. (5-25-94)
- 10. Poor Workmanship.** Performing workmanship which is grossly incompetent or repeatedly below the standards adopted by Title 44, Chapters 21 and 22, these rules, IDAPA 07.03.12, "Rules Governing Manufactured or Mobile Home Installations," the Federal Manufactured Housing and Safety Standards Act of 1974, or the latest Idaho adopted editions of the International Building Code, the National Electrical Code, the Uniform Plumbing Code, and the International Mechanical Code, then in effect. (3-29-10)
- 11. Installation Supervisor Required.** Failure to have a licensed responsible managing employee personally supervise any installation ~~or service~~ of a manufactured/mobile home. ~~(3-29-10)~~()
- 12. Failure of Organizations to License its Employees.** Failure of an organization to have its employees maintain any license as required by these rules. (3-24-05)
- 13. Failure to Honor Warranties.** Failure to honor any warranty or other guarantee given by a licensee for construction, workmanship, or material as a condition of securing a contract, or of selling, leasing, reconstructing, improving, repairing, or installing any manufactured/mobile home, or accessory structure. (3-29-10)
- 14. Revocation or Denial of License.** Revocation or denial of a license issued pursuant to these rules or an equivalent license by any other state or U.S. territory. (3-29-10)
- 15. Failure to Maintain Any Required License.** Failure of the licensee to maintain any other license required by any city or county of this state. (5-25-94)
- 16. Failure to Respond to Notice.** Failure to respond to a notice served by the Division as provided by law within the time specified in the notice. (5-25-94)
- 17. Failure to Permit Access to Documentary Materials.** Failure or refusing to permit access by the Division to relevant documentary materials after being requested to do so by the Division. (5-25-94)
- 18. Conviction of Misdemeanor.** Conviction of a misdemeanor for violation of any of the provisions of Title 44, Chapters 21 or 22, Idaho Code. (5-25-94)
- 19. Conviction of Felony.** Conviction or withheld judgment for a felony in this state, any U.S. territory, or country. (3-29-10)
- 20. Dealing with Stolen Manufactured or Mobile Homes.** To knowingly purchase, sell, or otherwise acquire or dispose of a stolen manufactured or mobile home. (5-25-94)
- 21. Violation of Permit or Inspection Requirements.** To knowingly violate any permit or inspection requirements of any city or county of this state. (5-25-94)

(BREAK IN CONTINUITY OF SECTIONS)

019. FEES.

- 01. Fees for Issuance and Renewal of License.** The following fees for the issuance and renewal of a license will be charged, and no application for licensing pursuant to these rules will be accepted by the Division unless it is accompanied by the appropriate fee: (5-25-94)

a. Manufactured/mobile home retailer or resale broker's license: four hundred forty dollars (\$440). Retailers who are also installers will not have to pay an installer's license fee in order to hold both licenses. (3-29-10)

b. Manufacturer license: four hundred forty dollars (\$440); (3-24-05)

c. Manufactured/mobile home ~~service company or~~ installer license: two hundred twenty dollars (\$220); ~~(3-29-10)~~()

d. Manufactured/mobile home salesman's license: forty-five dollars (\$45). (3-24-05)

e. Responsible managing employee license: forty-five dollars (\$45). (3-29-10)

02. Performance Bonding Requirements. No application for licensing pursuant to these rules shall be accepted unless it is accompanied by evidence of the following performance bond: (3-24-05)

a. Manufacturer: twenty thousand dollar (\$20,000) bond; (5-25-94)

b. Manufactured/mobile home retailer: twenty thousand dollar (\$20,000) bond; (3-29-10)

c. Manufactured/mobile home resale broker: thirty thousand dollar (\$30,000) bond; (3-29-10)

d. Manufactured/mobile home ~~service company or~~ installer: five thousand dollar (\$5,000) bond. Retailers who are also installers will not be required to post an installer's bond in order to hold both licenses. ~~(3-29-10)~~()

e. Responsible managing employee. No bond. (3-29-10)

03. Money or Securities Deposit in Lieu of Performance Bond. A money or securities deposit shall be accepted by the Division in lieu of the performance bonding requirement as set forth at Title 44, Chapter 21, Idaho Code, and Subsection 019.02 of these rules, under the following circumstances: (3-29-10)

a. Any such money or securities deposit shall be in a principal sum equal to the face amount of the performance bond required for the applicable licensing category; (3-29-10)

b. Any such money deposit shall be deposited in a time certificate of deposit which provides on its face that the principal amount of such certificate of deposit shall be payable to the Division upon presentment and surrender of the instrument; (7-1-96)

c. Any such time certificate of deposit shall have a maturity date of one (1) year from the effective date of licensure and shall have an automatic renewal provision for subsequent years; (7-1-96)

d. Any such time certificate of deposit shall be provided to the Division at the time of application for licensure and shall be retained by the Division during the effective period of licensure unless otherwise expended by the Division to insure completion of the licensee's performance; (7-1-96)

e. Any such time certificate of deposit shall be returned to an unsuccessful applicant for licensure; (7-1-96)

f. The principal amount of any such time certificate of deposit, to the extent not otherwise expended to insure completion of the licensee's performance, shall be returned to the depositor by the Division on or before ninety (90) days subsequent to the occurrence of any of the following events: voluntary surrender or return of a license; expiration of a license; lapse of a license; or revocation or suspension of a license; and (7-1-96)

g. Any interest income earned by reason of the principal amount of the time certificate of deposit shall be the property of the licensee. (7-1-96)

(BREAK IN CONTINUITY OF SECTIONS)

022. CIVIL PENALTIES.

The following acts shall subject the violator to penalties based on the following schedule: (3-29-10)

01. Industry Licensing. Except as provided for by Section 44-2106, Idaho Code, any person who engages in the business of a manufacturer, retailer, resale broker, salesman, installer, ~~service company~~, or responsible managing employee (RME) as defined in Section 44-2101A, Idaho Code, without being duly licensed by the Division shall be subject to a civil penalty of not more than five hundred dollars (\$500) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. ~~(3-29-10)~~()

02. Deceptive Practice. In accordance with Section 44-2106(2), Idaho Code, any retailer, resale broker, installer, salesman, ~~service company~~, or RME who intentionally publishes or circulates any advertising that is misleading or inaccurate in any material respect or that misrepresents any of the products or service sold or provided by a manufacturer, retailer, resale broker, installer, ~~service company~~, or RME, shall be subject to a civil penalty of not more than five hundred dollars (\$500) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. ~~(3-29-10)~~()

03. Dealing with Stolen Manufactured or Mobile Homes. In accordance with Section 44-2106(2), Idaho Code, any person who knowingly purchases, sells, or otherwise acquires or disposes of a stolen manufactured or mobile home shall be subject to a civil penalty of not more than one thousand dollars (\$1,000). (3-29-10)

04. Failure to Maintain a Principal Place of Business. In accordance with Section 44-2106(2), Idaho Code, any person who is a retailer or resale broker duly licensed by the Division and who fails to maintain a principal place of business within Idaho, shall be subject to a civil penalty of not more than five hundred dollars (\$500) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. (3-29-10)

05. Violation of Rules and Statutes. Any person who knowingly violates any of the provisions of these rules, IDAPA 07.03.12, "Rules Governing Manufactured or Mobile Home Installations," or the provisions of Title 44, Chapters 21 or 22, Idaho Code, shall be subject to a civil penalty of five hundred dollars (\$500) for the first offense and one thousand dollars (\$1,000) for each offense thereafter. (3-29-10)

06. Gross Violation. In case of continued, repeated, or gross violations of these rules or IDAPA 07.03.12, "Rules Governing Manufactured or Mobile Home Installations," a license revocation may be initiated for licensed individuals under Title 44, Chapter 21, Idaho Code. Non-licensed individuals shall be subject to prosecution by the appropriate jurisdiction under Idaho law. (3-29-10)

07. Judicial Review. Any party aggrieved by the final action of the Administrator shall be entitled to a judicial review thereof in accordance with the provisions of Title 67, Chapter 52, Idaho Code. (3-29-10)

IDAPA 09 - DEPARTMENT OF LABOR

09.01.30 - UNEMPLOYMENT INSURANCE BENEFIT ADMINISTRATION RULES

DOCKET NO. 09-0130-1301

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 72-1333, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 18, 2013.

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

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

A new rule is being promulgated to repeal the tel-a-claim reporting method for unemployment insurance benefit claimants. The current tel-a-claim system cannot accommodate enhanced work search reporting requirements the Department is requiring to reduce benefit fraud and lower employer taxes. Replacing it with a new call-in system would be costly. Because of reduced federal funding, the Department does not have the money to build a new tel-a-claim system. Instead, enhanced work search reporting requirements will be added to the Department's existing internet-based reporting system. This internet-based system can be accessed from personal computers or computers with public access such as those in public libraries or in the Department's 25 local offices.

A new rule is being promulgated to amend the current "reasonable length of time" job attached classification standard with a maximum 12-week standard. This rule change will require benefit claimants to look for work and hopefully find new employment sooner than waiting for their former employers to rehire them if their temporary layoff period will exceed 12 weeks. Of the surrounding states, Montana is the only one without a limit on the rehire period. The other surrounding states range from 4 weeks in Oregon to 12 weeks in Wyoming.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: There will be no fiscal 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 July 3, 2013 Idaho Administrative Bulletin, [Vol. 13-7, pages 36 and 37](#).

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 Joshua McKenna 332-3570 ext. 3919.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 25, 2013.

DATED this 24th of July, 2013.

Joshua McKenna, Benefits Bureau Chief
Idaho Department of Labor
317 West Main Street, Boise, Idaho 83735
Phone 332-3570 ext. 3919 / Fax 334-6125

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 09-0130-1301

550. REPORTING REQUIREMENTS.

Each claimant shall report weekly or biweekly for benefits as directed. When filing claim reports, a claimant shall use the reporting method assigned by the Department. Failure to file timely reports in a manner required by this rule shall result in ineligibility for benefits for the week(s) claimed. Ref. Section 72-1366(1), Idaho Code. (3-29-12)

01. In-Person Reports. A claimant reporting in person must hand the report to an authorized employee of the local office or place it in a receptacle identified for that purpose. The Department will not accept reports deposited under or through the doors of the office. Reports filed in person at a local office shall be considered timely when filed within nine (9) calendar days immediately following the week(s) being claimed, except if the ninth day is a holiday, the reporting period shall be extended to include the next working day. (3-29-12)

02. Mailed Reports. Reports that are mailed shall be considered timely when the envelope containing the report is postmarked within nine (9) calendar days immediately following the week(s) being claimed, except if the ninth day is a holiday, the report period shall be extended to include the next working day. (3-29-12)

03. ~~Telephone~~Internet Reports. Reports filed ~~by telephone to the Idaho Tel A Claim system or~~ via the internet shall be considered timely when made between 12:01 a.m. Mountain Time of the Sunday following the week being claimed and midnight Mountain Time of the Saturday following the week being claimed. ~~(3-29-12)~~()

04. Facsimile Reports. Reports filed by facsimile shall be considered timely when transmitted on a form provided by the Department to a telephone number designated by the Department to receive such documents within nine (9) calendar days immediately following the week(s) being claimed, except if the ninth day is a holiday, the reporting period shall be extended to include the next working day. Reports shall be deemed filed upon receipt by the Department (3-29-12)

05. Electronic Mail Reports. Reports filed by electronic mail shall be considered timely when electronically mailed in a format provided by the Department to an email address designated by the Department to receive such documents within nine (9) calendar days immediately following the week(s) being claimed, except if the ninth day is a holiday, the reporting period shall be extended to include the next working day. Reports shall be deemed filed upon receipt by the Department. (3-29-12)

06. When Report Missing. If a claimant establishes, by credible and corroborated evidence, that a missing report was properly filed as required by this rule, a replacement report shall be considered timely. (3-29-12)

551. -- 574. (RESERVED)

575. SEEKING WORK.

Ref. Sec. 72-1366(4), (6), Idaho Code. (3-19-99)

01. Attitude and Behavior. A claimant's attitude and behavior must be conducive to a positive reaction by employers to his job search. (3-19-99)

02. Effort to Secure Employment. A claimant will be expected to do what is normally done by unemployed persons that are seeking work. (3-19-99)

03. Employer's Hiring Practices. An employer's reluctance to hire a claimant because of his appearance or physical condition is not a determining factor in ruling on the claimant's eligibility. (3-19-99)

04. Job Attachment Classifications. For the purpose of administering the work search requirements of Section 72-1366(4) and (6), Idaho Code, claimants will be classified according to their attachment to an employer or industry, as follows: (3-19-99)

a. Code R-Recall, U-Union or X-Both. Claimants who have a firm attachment to an employer, industry or union, or who are temporarily or seasonally unemployed, and expect to return to their former jobs or employers in a reasonable length of time not to exceed a maximum of twelve (12) weeks. ~~(3-19-99)~~()

b. Code B. Claimants who possess marketable skills in an occupation, but have no immediate prospects for reemployment, and whose employment expectations (i.e., wages, hours, etc.) are realistic in relation to the normal labor market supply and demand in their areas of availability. (3-19-99)

c. Code C. Claimants who have no marketable skills or whose skills have become obsolete and who are unable to return to their former occupations, or who have a special need for employment-related services. (3-19-99)

d. Code D. Claimants who are assigned to a training course under the provisions of Section 72-1366(8), Idaho Code. (3-19-99)

05. Jobs Availability. A claimant will not be required to make useless employer contacts if there are no jobs available in the area due to seasonal factors. (3-19-99)

06. No Employment Prospects. A claimant shall apply for and accept a lower or beginning pay rate for employment if he has no prospects for a better paying job in the locality. (3-19-99)

07. Registering and Reporting on Work-Seeking Activity. A claimant must register for work and report as required to be eligible for benefits. Ref. Sec. 72-1366(1), (2), Idaho Code. (4-11-06)

08. Seasonal Availability. A claimant who is regularly employed on a seasonal basis shall be available for other types of work in the off-season to be eligible for benefits. (3-19-99)

09. Work-Seeking Requirement Categories. Claimants shall seek work in accordance with the following categories of work-seeking activity, as instructed by a Department representative or as notified by the Department via electronic claims messaging. A claimant must meet the requirements of the code to which the claimant is assigned. A claimant's category of work-seeking activity will be determined and modified based on the claimant's prevailing local labor market conditions and/or the average county unemployment rates. Claimants that have not registered for work when filing their claims and that are required to secure employment must register with the local office within two (2) weeks of filing an initial claim for benefits. Failure to comply with work-seeking requirements may result in a denial of benefits. (4-11-06)

a. Code O claimants must: (3-15-02)

i. Maintain regular contact with their employer(s) or union. Code O claimants may also be required to engage in one (1) or more of the following activities to increase their prospects of returning to work or securing employment: (3-15-02)

ii. Make local inquiries; (3-19-99)

iii. Maintain contact with the local office; (4-11-06)

iv. Check "help-wanted" ads in newspapers or trade publications; (3-15-02)

v. Attend a Job Search Workshop; or (3-15-02)

vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Department representative. (4-11-06)

b. Code I claimants will be required to engage in one (1) or more of the following activities to increase their prospects of securing employment: (3-15-02)

i. Make at least one (1) employer contact each week in the manner prescribed by the local office;

- (4-11-06)
- ii. Attend a Job Search Workshop; (3-15-02)
- iii. Expand work search efforts to surrounding areas or states; (3-15-02)
- iv. Send resumes to firms/businesses that hire people with their skills; (3-15-02)
- v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or (3-15-02)
- vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Department representative. (4-11-06)
- c.** Code 2 claimants will be required to engage in one (1) or more of the following activities to increase their prospects of securing employment: (3-15-02)
 - i. Make at least two (2) employer contacts per week in the manner prescribed by the local office; (4-11-06)
 - ii. Attend a Job Search Workshop; (3-15-02)
 - iii. Expand work search efforts to surrounding areas or states; (3-15-02)
 - iv. Send resumes to firms/businesses that hire people with their skills; (3-15-02)
 - v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or (3-15-02)
 - vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Department representative. (4-11-06)
- d.** Code 3 claimants will be required to engage in one (1) or more of the following activities to increase their prospects of securing employment: (3-15-02)
 - i. Make at least three (3) employer contacts per week in the manner prescribed by the local office; (4-11-06)
 - ii. Attend a Job Search Workshop; (3-15-02)
 - iii. Expand work search efforts to surrounding areas or states; (3-15-02)
 - iv. Send resumes to firms/businesses that hire people with their skills; (3-15-02)
 - v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or (3-15-02)
 - vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Department representative. (4-11-06)

IDAPA 09 - DEPARTMENT OF LABOR

09.01.35 - UNEMPLOYMENT INSURANCE TAX ADMINISTRATION RULES

DOCKET NO. 09-0135-1301

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 72-1333, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2013.

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

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

A new rule is being promulgated to require employers to report contributions online unless a waiver is granted by the Department. Waivers will be granted to employers if the online filing requirement poses a significant burden. The Department currently allows the reporting of contributions by either paper or online filing. The online reporting of employer contributions will allow the Department to process quarterly reports from nearly 50,000 employers more quickly with fewer resources and at a lower cost. The online reporting system corrects errors hundreds of employers typically make in paper reports. This will help employers avoid thousands of dollars in fines for reporting less quarterly taxes by the reporting deadline than the employer legally owes.

A new rule is being promulgated to revise the current "independently established" prong of the independent contractor test for unemployment insurance tax purposes with a more straight forward, common sense economic reality test. The current test has 15 factors and is too complicated to enforce and give employers poor guidance as to which workers may or may not be independent contractors. The economic reality test is currently used by the U.S. Department of Labor and the Social Security Administration and focuses on whether workers are economically dependent upon the business to which they render 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 resulting from this rulemaking: There will be no fiscal 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 July 3, 2013 Idaho Administrative Bulletin, [Vol. 13-7, pages 38 and 39](#).

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 Johnson 332-3570 ext. 3082.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 25, 2013.

DATED this 24th of July, 2013.

Michael Johnson, Bureau Chief
Idaho Department of Labor
317 West Main Street, Boise, Idaho 83735
Phone 332-3570 ext. 3082 / Fax 334-6125

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 09-0135-1301

011. GENERAL PROVISIONS.

The following Unemployment Insurance Tax Administration Rules are adopted pursuant to Section 67-4702, Idaho Code. (4-11-06)

01. Quarterly Reporting. Subject employers shall report all wages paid for services in covered employment each calendar quarter. In the event a subject employer does not pay wages during a calendar quarter, the employer shall file a quarterly report indicating that no wages were paid. Ref. Section 72-1337, Idaho Code. (3-22-07)

02. Contribution Due Date. Contributions are due on or before the last day of the month following the calendar quarter except if the last day of the month falls on a weekend or holiday, in which case the next workday is the due date. Ref. Section 72-1349, Idaho Code. (3-19-99)

03. Penalties and Interest on Bankruptcy. Penalty and/or interest shall not be assessed on amounts covered in the Department's Proof of Claim with the Bankruptcy Court for the period after the filing date of the Bankruptcy Petition and ending with the conclusion of bankruptcy proceedings and distribution of assets. Post petition penalty and interest shall be compromised, provided the amount due is paid in full by a date established after the termination of the bankruptcy proceedings. Ref. Section 72-1356, Idaho Code. (3-19-99)

04. Lien Interest. Lien interest on a delinquent account shall be assessed against the remaining unpaid balance computed from the day following the recording of a tax lien, at a rate established by law. (See Section 056). Ref. Section 72-1360, Idaho Code. (3-19-99)

05. Penalty and Interest During Controversy. Penalty and/or interest shall be compromised for periods when a valid controversy exists if amounts determined to be due are paid in full by a date established at the conclusion of the issue. Ref. Sections 72-1354 and 72-1360, Idaho Code. (3-19-99)

06. Confidential Information. Information obtained from an employer shall be held as confidential and shall not be released without the consent of the employer except as provided in IDAPA 09.01.08, "Rules on Disclosure of Information," Section 011 or when disclosure is necessary for collection of any amount due under the employment security law, or as otherwise provided by law or these rules. Ref. Sections 9-340 and 72-1342, Idaho Code. (3-19-99)

07. Filing of an Employer Appeal. (3-30-01)

a. An appeal shall be in writing, signed by an interested party or representative, and shall contain words that, by fair interpretation, request the appeal process for a specific determination or redetermination of the Department. The appeal may be filed by delivering it, or faxing it, to any Idaho Labor local office or to the UI Compliance Bureau of the Idaho Department of Labor, 317 W. Main Street, Boise, Idaho 83735. The date of personal delivery shall be noted on the appeal and shall be deemed the date of filing. A faxed appeal that is received by an Idaho Department of Labor local office or the UI Compliance Bureau by 5 p.m. (as of the time zone of the office receiving the appeal) on a business day shall be deemed filed on that date. A faxed appeal that is received by an Idaho Department of Labor local office or the UI Compliance Bureau on a weekend or holiday or after 5 p.m. on a business day shall be deemed filed on the next business day. An appeal may also be filed by mailing it to any Idaho Department of Labor local office or to the UI Compliance Bureau, Idaho Department of Labor, 317 W. Main Street, Boise, Idaho 83735. If mailed, the appeal shall be deemed to be filed on the date of mailing as determined by the postmark on the request. Ref. Section 72-1361, Idaho Code. (3-22-07)

b. An appeal should be accompanied by a specific statement, information or evidence which provides an explanation as to why the original determination is erroneous. (3-30-01)

c. In cases where a determination of amounts due is made by the Department pursuant to Section 72-

1358, Idaho Code, the reports shall replace the determination and will be used to establish the employer's liability if (i) the employer files reports for the periods covered by the determination before the determination becomes final, and (ii) the Department determines that the reports are accurate and complete. If the Department determines the reports are not accurate or complete, the reports shall be treated as an appeal of the determination. (3-30-01)

08. Determinations. Determinations shall be in writing, signed by an authorized representative of the director, and shall contain provisions which advise the interested parties of their right to appeal the determination within fourteen (14) days from the date of mailing, or the date of electronic transmission to an electronic-mail address approved by the Department, of the determination in accordance with Sections 72-1361 and -1368(5), Idaho Code. (7-1-10)

09. Determination of Payment Date. Each amount shall be deemed to have been paid on the date that the Department receives payment thereof in cash or by check or other order for the payment of money honored by the drawer on presentment; provided, that if sent through the mail, it shall be deemed to have been paid as of the date mailed as determined by the postmark on the envelope containing same, or the date of the check in lieu of a postmark. Provided further, that in the case of payments received by means of garnishment, execution, or levy, the amount received shall be deemed to have been paid as of the date that the order of garnishment, execution, or levy is served. Ref. Section 72-1349, Idaho Code. (3-19-99)

10. Release of Lien upon Payment in Full. An amount secured by a lien shall be deemed to be satisfied when payment in full is received by the Department in the form of cash, money order, or other certified funds, or proof presented that a check or other negotiable instrument has been honored by its drawer upon presentment. Ref. Section 45-1908, Idaho Code. (3-19-99)

11. Contribution Reports. Each contribution shall be accompanied by an employer's contribution report. All contribution reports shall be filed electronically with the department unless the employer has petitioned the department in writing for a waiver and the department has granted a waiver allowing the filing of a non-electronic contribution report. All contribution reports shall be in a form or medium prescribed and furnished or approved for such purpose by the department, giving such information as may be required, including number of individuals employed and wages paid or payable to each, which must be signed, ~~or~~ furnished, or acknowledged by the covered employer or, on their behalf by someone having personal knowledge of the facts therein stated, and who has been authorized by the covered employer to submit the information. Ref. Section 72-1349, Idaho Code. ~~(4-11-06)~~()

a. Common paymaster arrangements as referenced by Internal Revenue Code Section 3306 are prohibited for Idaho unemployment insurance purposes. Each covered employer shall complete and submit an Idaho business registration form and the Department will assign to the covered employer a unique unemployment insurance account number. The covered employer must file quarterly reports under its assigned unemployment insurance account number. The workers of one (1) covered employer may not be reported using the assigned unemployment insurance account number of a different covered employer or related entity. Ref. Sections 72-1325 and 72-1315, Idaho Code. (3-22-07)

(BREAK IN CONTINUITY OF SECTIONS)

112. DETERMINING STATUS OF WORKER.

01. Determining if Worker Is an Employee. In making a determination as to whether a worker is performing services in covered employment, it shall be determined whether the worker is an employee. To determine whether a worker is an employee, the following factors may be considered: (3-22-07)

a. The way in which the business entity represented its relationship with the worker prior to the investigation or litigation, including representations to the Internal Revenue Service; (3-19-99)

b. Statements made to the Department; (3-19-99)

c. Method of payment to the worker, in particular whether federal, state, and FICA taxes are withheld from paychecks; and (3-19-99)

d. Whether life, health, or other benefits are provided to the worker at the business entity's expense. (3-19-99)

02. Determining if Worker Is an Independent Contractor. If it cannot be determined that a worker is an employee pursuant to Subsection 112.01 above, then a determination shall be made whether the worker is an "independent contractor" pursuant to the terms of Section 72-1316(4), Idaho Code. For the purposes of that section and these rules, an independent contractor is a worker who meets the requirements of both Sections 72-1316(4)(a) and (b), Idaho Code. (3-19-99)

03. Proving Worker Is Free from Control or Direction in His Work. To meet the requirement of Section 72-1316(4)(a), Idaho Code, the alleged employer must prove that a worker has been and will continue to be free from control or direction in the performance of his work, both under his contract of service and in fact. The following factors may be considered in this determination: (3-22-07)

a. Whether the alleged employer has control over: (3-19-99)

i. The details of the work; (3-19-99)

ii. The manner, method or mode of doing the work; and (3-19-99)

iii. The means by which the work is to be accomplished, but without reference to having control over the results of the work. (3-19-99)

b. The freedom from direction and control must exist in theory (under a contract of service) and in fact; and (4-11-06)

c. The employer must demonstrate that it lacked a right to control the worker. (4-11-06)

04. Proving Worker Is Engaged in Independently Established Business. To meet the requirement of Section 72-1316(4)(b), Idaho Code, it must be proven that a worker is engaged in an independently established trade, occupation, profession or business. The following factors may are significant and shall be considered in making this determination, although no single factor is regarded as controlling: ~~(3-22-07)~~()

a. ~~Skills, qualifications, and training required for the job~~ The level of skill required to perform the work; ~~(3-19-99)~~()

i. A worker who performs routine tasks requiring little or no training is indicative of the worker's status as an employee. ()

ii. A worker who performs work requiring skills marketable as a trade, occupation, profession or business, such as an electrician, attorney, physician, or CPA, is indicative of the worker's status as an independent contractor. ()

iii. A worker who performs work requiring special licensing or compliance with regulatory requirements is indicative of the worker's status as an independent contractor. ()

iv. A worker who receives all or substantially all of the worker's job training from the alleged employer is indicative of the worker's status as an employee. ()

b. ~~Method of payment, benefits, and tax withholding~~ The extent to which the worker's services are an integral part of the alleged employer's business; ~~(3-19-99)~~()

i. A worker who performs the primary type of work that the alleged employer is in business to provide to its customers or clients is indicative of the worker's status as an employee. For example, an automotive

repair business hires an additional mechanic to help in its service repair shop. Since the work provided by the worker is the primary type of work the automotive repair business provides to its customers, the work is indicative of the worker's status as an employee. ()

ii. A worker who performs a specific job that is secondary to an integral part of the employer's business is indicative of the worker's status as an independent contractor. For example, if a manufacturing business requiring routine electrical work within its manufacturing facility hires an independent electrical company to provide that service, the electrical work performed is indicative of the worker's status as an independent contractor. ()

iii. A worker who supervises the alleged employer's employees is indicative of the worker's status as an employee. ()

iv. If the success of a business depends to an appreciable degree upon the performance of certain services, the worker performing those services is indicative of that worker's status as an employee. ()

v. If a worker is not required to work solely for the alleged employer and there is a separate contractual relationship for each job that ends upon the completion of that job, the work is indicative of the worker's status as an independent contractor. ()

c. Right to negotiate agreements with other workers The permanency of the relationship; (3-19-99)()

i. The longer a worker works solely for a single alleged employer, the more indicative it is of the worker's status as an employee. ()

ii. A worker who makes the worker's services available to the general public for hire on a regular and consistent basis is indicative of the worker's status as an independent contractor. ()

iii. A worker whose hours worked are regularly scheduled, rather than sporadic or occasional, is indicative of the worker's status as an employee. ()

iv. Work with a specific ending date that ends the working relationship between the worker and the alleged employer is indicative of the worker's status as an independent contractor. ()

v. Work that is open ended allowing the worker to continue working for the same alleged employer as long as performance standards are met, is indicative of the worker's status as an employee. ()

d. Right to choose sales techniques or other business techniques A worker's investment in facilities and equipment; (3-19-99)()

i. A worker who is reimbursed for work-related purchases, materials or supplies, or is furnished work-related materials or supplies by the alleged employer is indicative of the worker's status as an employee.()

ii. A worker who uses the tools and equipment of the alleged employer is indicative of the worker's status as an employee. ()

iii. A worker's significant investment in tools and equipment compared to the cost of the tools and equipment provided by the alleged employer is indicative of the worker's status as an independent contractor. ()

iv. A worker who is financially responsible to the alleged employer for damage to equipment or tools is indicative of the worker's status as an independent contractor. ()

v. A worker's investment in physical facilities used by the worker in performing services is indicative of the worker's status as an independent contractor. ()

vi. A worker's lack of investment in physical facilities indicating a dependence on the alleged employer for whom the worker's services are performed is indicative of the worker's status as an employee. ()

- ~~e.~~ ~~Right to determine hours~~ Whether a worker is customarily engaged in an outside trade, occupation, profession, or business providing the same type of services the worker provides for the alleged employer engaging his services; (3-19-99)()
- ~~i.~~ A worker who provides one (1) type of service for an alleged employer, while providing the same type of service to others for hire, is indicative of the worker's status as an independent contractor. ()
- ~~ii.~~ A worker who provides one (1) type of service for an alleged employer, while providing a different type of service to others for hire, is indicative of the worker's status as an employee of the alleged employer. ()
- ~~iii.~~ A worker who advertises independently via yellow pages, business cards, web pages, or other types of media is indicative of the worker's status as an independent contractor. ()
- ~~f.~~ ~~Whether a worker is customarily engaged in an outside trade, occupation, profession, or business providing the same type of services the worker provides for the business engaging his services~~ A worker's opportunities for profit and loss; (4-4-13)()
- ~~i.~~ A worker required to carry business related expenses such as insurance, bonding, or workers compensation coverage is indicative of the worker's status as an independent contractor. ()
- ~~ii.~~ A worker's ability to earn a profit by performing work more efficiently or suffer a loss because of the work performed is indicative of the worker's status as an independent contractor. ()
- ~~iii.~~ A worker who is subject to a risk of economic loss due to significant investments or a bona fide liability for expenses is indicative of the worker's status as an independent contractor. ()
- ~~g.~~ ~~Special licensing or regulatory requirements for performance of work;~~ Other factors when viewed fairly in light of all the circumstances that may or may not indicate that the worker was engaged in an independently established trade occupation, profession, or business. These factors may include control of the premises, right to determine hours, or who sets the rate of pay. (3-19-99)()
- ~~h.~~ Whether the work is part of the employer's general business; (3-19-99)
- ~~i.~~ The nature and extent of the work; (3-19-99)
- ~~j.~~ The term and duration of the relationship; (3-19-99)
- ~~k.~~ The control of the premises; (3-19-99)
- ~~l.~~ Whether the worker has the authority to hire subordinates; (3-19-99)
- ~~m.~~ ~~Whether the worker owns or leases major items of equipment or incurs substantial unreimbursed expenses, provided, that in a case where a worker leases major items of equipment from the alleged employer;~~ (3-19-99)
- ~~i.~~ The terms of the lease; and (3-19-99)
- ~~ii.~~ The actions of the parties pursuant to those terms must be commercially reasonable as measured by applicable industry standards. (3-19-99)
- ~~n.~~ ~~Whether either party would be liable to the other party upon preemptory or unilateral termination of the business relationship; and,~~ (3-19-99)
- ~~o.~~ ~~Other factors which, viewed fairly in light of all the circumstances in a given case, may indicate the existence or lack of an independently established trade occupation, profession or business.~~ (3-19-99)

05. Meeting Criteria for Covered Employment. A worker who meets one (1), but not both, of the tests in Subsections 112.03 and 112.04 above shall be found to perform services in covered employment. (3-19-99)

06. Evidence of Contractual Liability for Termination. For purposes of making a determination under Section 72-1316(4), Idaho Code, and this regulation, the party alleging that summary termination by either party would result in contractual liability must present some evidence upon which to base such allegation. Ref. Section 72-1316(4), Idaho Code. (3-19-99)

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

10.01.01 - RULES OF PROCEDURE

DOCKET NO. 10-0101-1301

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2014 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 54-1208, 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:

Current Idaho Code requires that if an applicant for licensure as a professional land surveyor has not graduated from an approved four year surveying program they must have a four year degree in a related science and demonstrate to the satisfaction of the board that they possess knowledge and skill approximating that attained through graduation from an approved four year surveying program. Since 2010 the Board has had rules which defined what satisfied that requirement. Last year the National Council of Examiners for Engineering and Surveying developed standards for an approved surveying program based on accreditation requirements. The board has adopted those standards, with some modification, in lieu of those in place since 2010 in order to utilize nationalized standards.

The pending rule is changed from the proposed rule. There is one addition college course added to the list of example college courses that may be taken to fulfill the education requirements for certification as a land surveyor intern and for comity licensure with other states. The added college course is Survey Adjustment and Coordinates Systems. This course is an optional course and not a required course.

The pending rule is adopted as amended. The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the July 3, 2013 Idaho Administrative Bulletin, [Vol. 13-7, pages 40 through 46](#).

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

There is no fiscal impact to the state general or agency dedicated funds.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Keith Simila at (208) 373-7210.

DATED: August 8, 2013.

Keith Simila, P.E.
Executive Director
1510 Watertower St.
Meridian, Idaho 83642
Telephone: (208) 373-7210
Fax: (208) 373-7213
Email: keith.simila@ipels.idaho.gov

DOCKET NO. 10-0101-1301 - ADOPTION OF PENDING RULE

Substantive changes have been made to the pending rule.
Italicized red text that is double underscored is new text that has been added to the pending rule.

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

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 13-7, July 3, 2013, pages 40 through 46.

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2014 Idaho State Legislature for final adoption.

FOLLOWING IS THE AMENDED TEXT OF THE PENDING RULE FOR DOCKET NO. 10-0101-1301

017. EXAMINATIONS.

02. **Eligibility for Examinations, Educational Requirements.** The application for licensure as a professional engineer, professional land surveyor or certification as an engineer intern or land surveyor intern, together with the written examination, shall be considered in the determination of the applicant's eligibility. Each applicant must meet the minimum requirements as set forth in Section 54-1212, Idaho Code, before being assigned to any examination. (3-29-10)

c. Beginning July 1, 2010~~4~~, an applicant who has completed a four (4) year bachelor degree program in a related science must have completed a minimum of the following college level academic courses, or their equivalents as determined by the Board, before the Board will consider them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year surveying curriculum as required by Section 54-1212(4)(b), Idaho Code, for assignment to the examination for certification as a Land Surveyor Intern or as required by Section 54-1212(2)(b), Idaho Code, for assignment to the examination for licensure as a professional land surveyor: ~~(5-8-09)~~()

[Subparagraph 017.02.c.iii.]

iii. ~~Three (3) credits in Public Land Surveying;~~ Thirty (30) college semester credit hours of surveying science and surveying practice. Courses shall be taught by qualified surveying faculty. Examples of surveying courses are basic surveying, route surveying, geodesy, geographic information systems, land development design and planning, global positioning systems, photogrammetry, mapping, survey adjustment and coordinates systems, and remote sensing. Required courses shall include a minimum of three (3) credit hours each in basic surveying, route surveying, geodesy, surveying law, surveying office practice, land development design and planning, public land survey system and global positioning systems, and shall account for a minimum of twenty-four (24) semester credit hours. Graduate-level surveying courses can be included to fulfill curricular requirements in this area. ~~(3-30-07)~~()

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

01. Interstate Licensure Evaluation. Each application for Idaho professional engineer license or professional land surveyor license submitted by an applicant who is licensed as a professional engineer, or licensed as a professional land surveyor, respectively, in one (1) or more states, territories or foreign countries, shall be considered by the Board on its merits, and the application evaluated for substantial compliance with respect to the requirements of the Idaho law. Graduates of programs accredited by organizations signatory to the "Washington Accord" and graduates from programs evaluated by ABET as being substantially equivalent to EAC/ABET programs shall be considered to have satisfied the educational requirement for issuance of a license as a professional engineer. Individuals who have passed examinations considered by the Board to be of comparable difficulty and duration as those utilized by the Board shall be considered to have satisfied the examination requirement for issuance of a license as a professional engineer or professional land surveyor. (5-8-09)

c. An applicant who was originally licensed in another jurisdiction after June 30, 2010⁴ who has completed a four (4) year bachelor degree program in a related science must have completed a minimum of the following college level academic courses, or their equivalents as determined by the Board, before the Board will consider them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year surveying curriculum as required by Section 54-1212(2)(b), Idaho Code, for licensure as a professional land surveyor: ~~(3-30-07)~~()

[Subparagraph 019.01.c.iii.]

iii. ~~Three (3) credits in Public Land Surveying;~~ Thirty (30) college semester credit hours of surveying science and surveying practice. Courses shall be taught by qualified surveying faculty. Examples of surveying courses are basic surveying, route surveying, geodesy, geographic information systems, land development design and planning, global positioning systems, photogrammetry, mapping, survey adjustment and coordinates systems, and remote sensing. Required courses shall include a minimum of three (3) credit hours each in basic surveying, route surveying, geodesy, surveying law, surveying office practice, land development design and planning, public land survey system and global positioning systems, and shall account for a minimum of twenty-four (24) semester credit hours. Graduate-level surveying courses can be included to fulfill curricular requirements in this area. ~~(3-30-07)~~()

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

10.01.02 - RULES OF PROFESSIONAL RESPONSIBILITY

DOCKET NO. 10-0102-1301

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2014 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 54-1208, 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 current Rules of Professional Responsibility prohibit a licensee from soliciting or accepting a contract from a government authority on which an existing "principal or officer" of his organization serves as a member of the elected policy and governing body. In the course of investigating a recent complaint, the undefined term "principal" became an issue which caused the rule to be scrutinized. Rather than define "principal," the Board is proposing that additional terms be used to more specifically name positions within a business entity about which this rule is intended. In addition, current rules prohibit a licensee from participating in decisions with respect to professional services by their firm. Rather than try to identify all such possible occurrences, the Board is proposing a rule which states that those persons are subject to the statutory provisions concerning ethics in government, and stating that a violation of those statutes is a violation of the Rules of Professional Responsibility.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 3, 2013 Idaho Administrative Bulletin, [Vol. 13-7, pages 47 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 is no fiscal impact to the state general or agency dedicated funds.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Keith Simila at (208) 373-7210.

DATED: August 8, 2013.

Keith Simila, P.E., Executive Director
1510 Watertower St.
Meridian, Idaho 83642

Telephone: (208) 373-7210
Fax: (208) 373-7213
Email: keith.simila@ipels.idaho.gov

DOCKET NO. 10-0102-1301 - 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 13-7, July 3, 2013, pages 47 through 49](#).**

**This rule has been adopted as a pending rule by the Agency and is now awaiting
review and approval by the 2014 Idaho State Legislature for final adoption.**

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

10.01.04 - RULES OF CONTINUING PROFESSIONAL DEVELOPMENT

DOCKET NO. 10-0104-1301

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2014 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 54-1208, 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 draft amendments will clarify what records must be kept to document continuing professional development.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 3, 2013 Idaho Administrative Bulletin, [Vol. 13-7, pages 50 and 51](#).

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

There is no fiscal impact to the state general or agency dedicated funds.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Keith Simila at (208) 373-7210.

DATED: August 8, 2013.

Keith Simila, P.E.
Executive Director
1510 Watertower St.
Meridian, Idaho 83642
Telephone: (208) 373-7210
Fax: (208) 373-7213
Email: keith.simila@ipels.idaho.gov

DOCKET NO. 10-0104-1301 - 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 13-7, July 3, 2013, pages 50 and 51](#).**

**This rule has been adopted as a pending rule by the Agency and is now awaiting
review and approval by the 2014 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. 11-1101-1301

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 September 18, 2013.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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:

Defines and clarifies the character qualifications and disqualification in the area of moral turpitude, drug use, and criminal record. Allows students who are applicants to attend college training programs to appeal denial of application to the POST Council Hearing Board.

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 William Flink at (208) 884-7251.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 25, 2013.

DATED this 9th day of August, 2013.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-1101-1301

054. CHARACTER.

01. Moral Turpitude. The POST Council may take into consideration the commission of any act or offense involving moral turpitude to ensure an applicant is of good moral character and warrants the public trust. “Moral turpitude” is conduct that is contrary to justice, honesty, or morality. BLACK’S LAW DICTIONARY 1030 (8th ed. 2004). The purpose of this requirement is to prohibit persons who engage in dishonest, unprofessional, unethical, or immoral conduct from becoming law enforcement officers, and to protect against acts or conduct ~~which may~~ that might endanger the safety and welfare of the public. (4-2-03)()

02. May Be Rejected. An applicant may be rejected who has committed any act involving moral turpitude, even though the applicant has never been charged by a law enforcement agency for such act. Such an act can include, but is not limited to, an act involving fraud, larceny, or the intent to harm persons. Such an act can also encompass certain sexual acts or sex-related acts, such as rape, sexual assault, lewd conduct with a child, sexual abuse of a child or vulnerable adult, child pornography, bestiality, video voyeurism, and prostitution. ()

03. May Be Accepted. If an applicant committed any act involving moral turpitude, the applicant may be accepted upon approval of the POST Division Administrator, provided the applicant’s agency head, with knowledge of the facts and circumstances concerning the act, recommends approval. The POST Division Administrator shall have the discretion to refer the application to the POST Council. ()

055. DRUG USE.

01. Marijuana. An applicant shall be rejected who has used marijuana: ()

a. Within the past three (3) years; ()

b. While employed as a law enforcement officer, in a prosecutorial position, or in a position of public safety, regardless of when the use occurred; or ()

c. On a regular, confirmed basis within the past five (5) years. ()

d. This prohibition includes cannabis, hashish, hash oil, and THC in both synthetic and natural forms. ()

02. Other Controlled Substances. An applicant shall be rejected who has illegally used any Schedule I through Schedule VI controlled substance, as defined in Sections 37-2705 through 37-2713A, Idaho Code, excluding marijuana: ()

a. Within the past five (5) years; ()

b. While employed as a law enforcement officer, in a prosecutorial position, or in a position of public safety, regardless of when the illegal use occurred; or ()

c. On more than a minimal and experimental basis during the applicant’s lifetime. ()

03. Prescription Drugs. An applicant shall be rejected who has used any prescription drug or a legally obtainable controlled substance in a manner for which it was not intended within the past three (3) years. ()

04. Drug Trafficking, Manufacturing, and Related Offenses. Subject to the rules above regarding use of controlled substances, an applicant shall be rejected who has violated any provision of: ()

a. The Idaho Uniform Controlled Substances Act, Section 37-2701 et seq., Idaho Code, including, but not limited to, the illegal sale or manufacture of a controlled substance or conspiring to illegally sell or manufacture a controlled substance; or ()

b. A comparable statute of another state or country. ()

c. Provided, however, that the POST Division Administrator may waive any misdemeanor conviction for violation of the Idaho Uniform Controlled Substances Act. When considering whether to grant such a waiver, the POST Division Administrator shall have the discretion to refer the application to the POST Council. ()

05. Juvenile Drug Offense Convictions. Any misdemeanor conviction of a drug offense prosecuted pursuant to Title 18, Chapter 15, Idaho Code, or a comparable statute of another state or country, shall not be a basis for rejection of an applicant. However, an applicant may be rejected who has been convicted of a felony drug offense prosecuted pursuant to Title 18, Chapter 15, Idaho Code. If an applicant has been convicted of such a felony drug offense, the applicant may be accepted upon approval of the POST Division Administrator, provided the applicant's agency head, with knowledge of the facts and circumstances concerning the offense or violation, recommends approval. The POST Division Administrator shall have the discretion to refer the application to the POST Council. ()

0556. CRIMINAL RECORD.

01. Fingerprints. The applicant shall be fingerprinted on two (2) copies of the standard FBI Applicant fingerprint form, and a search made of local, state, and national fingerprint files to disclose any criminal record. The original copies of all records check results shall be retained by the POST Council. (4-2-03)

02. Conviction. The term "conviction" shall include: (4-2-03)

a. Any conviction in a federal, tribal, state, county, or municipal court; (3-15-02)

b. A voluntary forfeiture of bail, bond, or collateral deposited to secure a defendant's appearance in court as final disposition; (3-15-02)

c. The payment of a fine; (3-15-02)

d. A plea of guilty, nolo contendere; or (3-15-02)

e. A finding of guilt, notwithstanding the form of judgment or withheld judgment, regardless of whether the sentence is imposed, suspended, deferred, or withheld, and regardless of whether the plea or conviction is set aside or withdrawn, or the case or charge is dismissed or reduced, or the record expunged under Section 19-2604, Idaho Code, or any other comparable statute or procedure, where the setting aside of the plea or conviction, or dismissal or reduction of the case or charge, or expungement of the record is based upon lenity or the furtherance of rehabilitation rather than upon any defect in the legality or factual basis of the plea, finding of guilt, or conviction. (3-29-12)

03. Misdemeanor Conviction. A misdemeanor conviction of any federal, state, or local crime may be grounds for rejection of ~~the an~~ applicant, subject to the following provisions: (4-2-03)()

a. An applicant shall be rejected who has been convicted of any misdemeanor sex crime, ~~or~~ crime of deceit, or drug offense unless the conviction occurred more than five (5) years prior to application and the applicant's agency head files a written request for review with the POST Council. In the case of a willful concealment or petit theft conviction, the applicant may be accepted upon approval of the POST Division Administrator, and ~~the~~ Division Administrator shall have the discretion to refer the application to the POST Council. In all other cases, the POST Council shall review the application and determine whether the individual applicant shall be certifiable in the ~~State~~ of Idaho. (3-29-12)()

b. An applicant shall be rejected who has been convicted of ~~a~~ one (1) or more misdemeanor DUI during offenses within the two (2) years immediately preceding application. No waivers to this rule shall be granted by the POST Council ~~for DUI convictions within the last two (2) years. If the conviction occurred more than two (2) years prior to application, the applicant may be accepted upon approval of the POST Division Administrator provided the applicant's agency head, with knowledge of the facts and circumstances concerning the offense or violation, recommends approval. The Division Administrator shall have the discretion to refer the application to the POST Council.~~ (3-15-02)()

c. An applicant shall be rejected who has been convicted of two (2) or more misdemeanor DUI offenses within the five (5) years immediately preceding application. No waivers to this rule shall be granted by the POST Council. ()

d. An applicant who is not subject to the provisions of subsections (b) and (c) above may be rejected if the applicant has been convicted of one (1) or more misdemeanor DUI offenses within ten (10) years prior to application. Such an applicant may be accepted upon approval of the POST Division Administrator, provided the applicant's agency head, with knowledge of the facts and circumstances concerning the offense or violation, recommends approval. The POST Division Administrator shall have the discretion to refer the application to the POST Council. This rule is not a basis for rejection of an applicant if the conviction occurred ten (10) or more years prior to application. ()

ee. An applicant ~~with~~ may be rejected who has been convicted of any other misdemeanor offense within the two (2) years immediately preceding application. If the misdemeanor conviction occurred within the two (2) years immediately preceding application, the applicant may be accepted upon approval of the POST Division Administrator, provided ~~the conviction occurred more than two (2) years prior to application and~~ the applicant's agency head, with knowledge of the facts and circumstances concerning the offense or violation, recommends approval. The Division Administrator shall have the discretion to refer the application to the POST Council. ~~If the conviction occurred during the two (2) years immediately preceding application, the POST Council shall review the application and determine whether the individual shall be certifiable in the state of Idaho.~~ (3-29-12)()

f. An applicant may be rejected who has been convicted of any other misdemeanor offense two (2) or more years but less than ten (10) years prior to application. If the misdemeanor conviction occurred two (2) or more years but less than ten (10) years prior to application, the applicant may be accepted upon approval of the POST Division Administrator, provided the applicant's agency head, with knowledge of the facts and circumstances concerning the offense or violation, recommends approval. The POST Division Administrator shall have the discretion to refer the application to the POST Council. This rule is not a basis for rejection of an applicant if the conviction occurred ten (10) or more years prior to application. ()

g. Any misdemeanor conviction prosecuted pursuant to Title 18, Chapter 15, Idaho Code, or a comparable statute of another state or country, shall not be a basis for rejection of an applicant. ()

04. Felony Conviction. An applicant shall be rejected who has been convicted of any felony crime, the punishment for which could have been imprisonment in a federal or state penal institution, unless the felony conviction occurred before the applicant was eighteen (18) years of age and ten (10) or more years prior to application. If the conviction occurred before the applicant was eighteen (18) years of age and ten (10) or more years prior to application, the applicant may be accepted upon approval of the POST Division Administrator, provided the applicant's agency head, with knowledge of the facts and circumstances concerning the offense or violation, recommends approval. The POST Division Administrator shall have the discretion to refer the application to the POST Council. For the purpose of this rule, a felony conviction shall ~~continue to~~ be considered a felony conviction regardless of whether the conviction is later reduced to a misdemeanor conviction under Section 19-2604, Idaho Code, or any other comparable statute or procedure, where the reduction is based upon lenity or the furtherance of rehabilitation rather than upon any defect in the legality or factual basis of the felony conviction. No waivers to this rule shall be granted by the POST Council. (3-29-12)()

0567. MILITARY RECORD.

01. Military Discharge. A "dismissal," "bad conduct discharge" (BCD), "dishonorable discharge" (DD), or administrative discharge of other than honorable (OTH) from the military service shall disqualify the applicant. The administrative discharge of "general under honorable conditions" (GEN), a "general" discharge, or an "uncharacterized" discharge may be grounds for rejection. In the case of a "general under honorable conditions" or "uncharacterized" discharge, the applicant may be accepted upon approval of the POST Division Administrator. The Division Administrator shall have the discretion to refer the application to the POST Council. In the case of a "general" discharge, the POST Council shall review the application and determine whether the individual shall be certifiable as a peace, detention, juvenile detention, juvenile probation, adult probation and parole, or adult misdemeanor probation officer or as a direct care staff member of the Idaho Department of Juvenile Corrections in

the state of Idaho. (4-7-11)

02. Documentation. Proof of military record shall not have been mutilated, altered, or damaged; shall indicate character of service; and shall be in the form of a photocopy of the following: (4-7-11)

a. DD-214 for any active military service, (4-7-11)

b. NGB Form 22 for any National Guard service, and (4-7-11)

c. AF-216 for any Air Force service. (4-7-11)

0578. TRAFFIC RECORD INVESTIGATION.

01. Requirements. (7-1-93)

a. The applicant shall possess a valid driving license from his state of residence and qualify for an Idaho driver's license. (3-15-02)

b. An applicant with a record of a driver's license suspension in any jurisdiction, or a driving without privileges conviction or an equivalent conviction in any other jurisdiction, may be accepted upon approval of the POST Division Administrator provided the suspension concluded or conviction occurred more than two (2) years prior to application and the applicant's agency head, with knowledge of the facts and circumstances concerning the suspension or conviction, recommends approval. The Division Administrator shall have the discretion to refer the application to the POST Council. If the suspension concluded or conviction occurred during the two (2) years immediately preceding application, the POST Council shall review the application and determine whether the individual shall be certifiable as a peace, detention, or juvenile detention officer in the state of Idaho. (3-15-02)

c. Where the applicant's traffic record discloses the commission of five (5) or more moving traffic offenses during the three (3) years immediately preceding application, the POST Council shall review the application and determine whether the individual shall be certifiable as a peace, detention, or juvenile detention officer in the state of Idaho. (3-15-02)

02. Procedures. At a minimum, a check of driving records shall be made of the Motor Vehicle Division, Highway Department, state of Idaho, and the files of the motor vehicle department in the states of the applicant's previous residences. (3-15-02)

0589. BACKGROUND INVESTIGATION.

01. Requirements. The applicant shall have undergone a comprehensive background investigation, the results of which attest to the fact that the person meets the minimum standards for employment, has not engaged in conduct or a pattern of conduct that would jeopardize public trust in the law enforcement profession, and is of good moral character. Consideration will be given to any and all law violations, including traffic and fish and game infractions or convictions. (3-15-02)

02. Procedures. (3-15-02)

a. The applicant shall complete and submit to the appointing law enforcement agency a comprehensive application and personal history statement prior to the start of the background investigation. The history statement shall contain questions which aid in determining whether the applicant is eligible for certified status as a peace, detention, juvenile detention, or juvenile probation officer. The background investigation shall include information provided by personal references, schools, and the last three (3) previous employers, as well as law enforcement agency records in jurisdictions where the applicant has lived or worked. This information shall be recorded and retained by the appointing agency. (4-2-08)

b. The appointing agency shall conduct a personal interview with the applicant to ascertain personal attributes such as personal appearance, demeanor, attitudes that are relevant to the law enforcement mission, judgment, maturity, resourcefulness, and ability to communicate. Searching questions shall be asked about: (3-15-02)

- i. Use of intoxicants, narcotics and drugs; (3-15-02)
 - ii. Physical, mental, and emotional history; (3-15-02)
 - iii. Family problems; (3-15-02)
 - iv. Moral outlook and habits; and (3-15-02)
 - v. Financial transactions. (3-15-02)
- c.** The appointing agency shall have a thorough investigation into the character and reputation of the applicant conducted by an experienced investigator. The applicant's morality, integrity, reputation, honesty, dependability, qualifications, experience, associations, emotional stability, prejudice, and loyalty shall be explored. (3-15-02)
- d.** All results of the background investigation shall be considered confidential and processed accordingly. (3-15-02)
- e.** The results of the background investigation shall ultimately be evaluated by the agency head and/or the appointing authority to determine whether the applicant is suitable. (3-15-02)

05960. 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 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. (3-27-13)

0601. MENTAL EXAMINATION.

01. Requirement. Where a question of emotional stability or disorder is indicated by the physician's report or the background investigation, a thorough evaluation shall be made by a licensed psychiatrist or clinical psychologist to determine if the applicant is free from any emotional or mental condition which might adversely affect the applicant's ability to perform the duties of a peace, detention, juvenile detention, or juvenile probation officer. (4-2-08)

02. Procedure. During the interview, the examining psychiatrist or psychologist shall evaluate the applicant sufficiently to assess those symptoms of a degree that would impair the effective performance of duty. The results of the examination shall be recorded and that record or a summary of recommendations shall be forwarded to the appointing authority for review. (3-15-02)

0612. APTITUDE.

The applicant shall be evaluated on the agency-approved aptitude test to determine if the applicant possesses the aptitude, capacity, and adaptability for absorbing and understanding the training and skills which are essential to the performance of the law enforcement function. (3-15-02)

0623. EXCEPTIONS.

The required minimum standards for employment are not applicable to the director of the Idaho State Police or any elected official. (4-2-08)

0634. CODE OF ETHICS/STANDARDS OF CONDUCT.

Each applicant shall attest that he has read, understands, and will abide by the POST Council's Code of Ethics as standards of professional conduct and that he has read and understands the conduct that may constitute cause for decertification as found in the POST Council's Code of Ethics and Subsections 091.03 and 091.04. (3-27-13)

01. Fundamental Duty. As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all to liberty, equality and justice. (3-21-12)

02. Personal and Official Life. I will keep my private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or my agency. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret, unless revelation is necessary in the performance of my duty. (3-21-12)

03. Appropriately Enforce the Law. I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. With no compromise for crime and the relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities. (3-21-12)

04. Public Trust. I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of law enforcement service. I will never engage in acts of corruption or bribery, nor will I condone such acts by other law enforcement officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice. (3-21-12)

05. Professional Performance. I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession...law enforcement. (3-21-12)

06~~4~~5. PROBATIONARY PERIOD.

01. Probation. Every officer appointed by an agency below the level of agency head shall satisfactorily complete a probationary period of not less than six (6) months. This requirement shall also apply to officers who transfer laterally into an agency. (3-15-02)

02. Supervisor/Mid-Manager. Every officer who is promoted or appointed to a supervisory, middle management, or assistant agency head position shall satisfactorily complete a probationary period of not less than six (6) months in that position. (3-15-02)

03. Extended. No peace, detention, juvenile detention, or juvenile probation officer who lacks the training qualifications required by the Council shall have his temporary or probationary employment extended beyond one (1) year by renewal of appointment or otherwise. (4-2-08)

06~~5~~6. SPECIAL PROVISIONS.

01. Minimum Standards. It is emphasized that these are minimum standards for employment. Higher standards are recommended whenever the availability of qualified applicants meets the demand. (7-1-93)

02. No Discrimination. No agency shall discriminate as to employment against any persons on the basis of race, creed, color, or sex, pursuant to state or federal law. (3-15-02)

03. Equal Opportunity Employer. Every agency shall be an equal opportunity employer. (3-15-02)

06~~6~~7. -- 069. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

327. ADMINISTRATION.

01. POST Council Administrative Rules. The ~~vocational college~~ law enforcement program ~~must~~ shall maintain access to a current copy of the POST Council's Administrative Rules. (4-11-06)()

02. Advisory Board/Committee. The ~~vocational college~~ law enforcement program ~~must~~ shall have an advisory board/committee comprised of the POST Division Administrator or his designee and criminal justice executives from several area agencies/organizations representative of the region the ~~vocational college law enforcement~~ program serves. (4-11-06)()

a. The advisory board/committee ~~must~~ shall elect a chairman and vice-chairman from among the agency heads on the board/committee. The terms of office ~~should~~ shall be initially staggered. No chairman or vice-chairman ~~may~~ shall serve in that capacity for longer than four (4) consecutive years. (4-11-06)()

b. The chairman or vice-chairman is responsible for scheduling and setting the agendas for all advisory board/committee meetings as well as for working with the program coordinator and/or administration of the ~~vocational college~~ law enforcement program. The chairman or vice-chairman may perform other duties as necessary. (4-11-06)()

03. Waiver Requests. The chairman of the advisory board/committee may request a waiver ~~from the POST Division Administrator, as allowed in the Minimum Standards for Employment provided in Sections 050 thru 064 of these rules,~~ for a student ~~who, more than two (2) years prior to application, was convicted of DUI; a misdemeanor other than a sex crime, crime of deceit, or drug offense; driving without privileges; had his driver's license suspended; or received a "general under honorable conditions" or "uncharacterized" discharge from the military service.~~ by following these procedures: (3-30-07)()

a. The advisory board/committee chairman ~~must~~ shall conduct a thorough background investigation to include the review of all police and court documents, including arrest reports and court dispositions; military records; and a written explanation from the student fully describing the circumstances and disposition of each arrest and incident. (3-30-07)()

b. The advisory board/committee chairman has sole discretion in determining whether a waiver ~~should~~ shall be requested. The advisory board/committee may be afforded an appeal at the chairman's discretion or if the advisory board/committee has a policy in place. (4-11-06)()

c. If the advisory board/committee chairman determines that a waiver ~~should~~ shall be pursued, he ~~must~~ shall submit a written request along with all documentation to the POST Division Administrator. The request ~~must~~ shall indicate that the advisory board/committee is aware of the arrest or incident, has investigated the circumstances surrounding the arrest or incident, and that he recommends approval of a waiver. (3-30-07)()

d. ~~If the POST Division Administrator denies a request for a waiver, the decision is final unless the student obtains employment with an Idaho law enforcement agency and that agency requests a waiver from the POST Council.~~ (4-11-06)

**IDAPA 15 - OFFICE OF THE GOVERNOR
DIVISION OF HUMAN RESOURCES**

15.04.01 - RULES OF THE DIVISION OF HUMAN RESOURCES AND PERSONNEL COMMISSION

DOCKET NO. 15-0401-1302

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-5309, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 18, 2013.

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

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

The changes clarify the rules so consistency is achieved across agencies and brings the rules in compliance with Section 65-502(17), Idaho Code, which was amended in the 2013 Legislature by SB1045a. The requirement of service in active duty during a war or in a combat zone has been removed from the definition of "veteran" and "disabled veteran" has been added to clarify language in related rules. Definitions for 'Administrative Leave' and 'Salary Equity Increase' have been added, as the terms were already addressed in Executive Policy or 2006 Agency Guidance Memorandum, but the purpose was not consistently understood and applied. Definitions for 'Merit Increase' and 'Underfill' were revised. Other rule sections were updated to add or clarify 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: 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 5, 2013 Idaho Administrative Bulletin, [Vol. 13-6, 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:

No documents were incorporated by reference into this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Michelle Peugh, HR Specialist Sr., 208-854-3073.

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 September 25, 2013.

DATED this August 15, 2013.

Vicki Tokita, Administrator
Division of Human Resources
304 N. 8th Street
P.O. Box 83720
Boise, ID 83720-0066
Phone: 208-334-2263
Fax: 208-854-3088

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 15-0401-1302

010. DEFINITIONS -- A THROUGH E.

Each of the terms defined in these rules have the meaning given herein unless a different meaning is clearly required by the context. Additional definitions are contained in Section 67-5302, Idaho Code. (7-1-87)

~~01.~~ **Administrative Leave.** Temporary paid leave from a job assignment where pay and benefits remain intact. ()

~~02.~~ **Administrator.** The Administrator of the Division of Human Resources in the Office of the Governor or delegate for those responsibilities assigned by the administrator to a specific appointing authority. (5-8-09)

~~023.~~ **Agency Classification.** A classification of positions unique to an agency. (5-8-09)

~~034.~~ **Allocation.** The assignment of a classification to a pay grade in the compensation schedule. (3-16-04)

~~045.~~ **Appeal.** Any written request for relief from dismissal, demotion, suspension, or other adverse action filed with the Commission by an employee, appointing authority, or applicant. The meaning of appeal includes application, petition, or protest. (3-16-04)

~~056.~~ **Appellant.** An employee, appointing authority, or applicant filing an appeal or a petition for review with the Commission. (3-16-04)

~~067.~~ **Appointing Authority.** The officer, board, commission, person or group of persons authorized by statute or lawfully delegated authority to hire, dismiss or otherwise significantly impact the employment status of individuals in any agency. (Ref. Section 67-5302(3), Idaho Code) (5-8-09)

~~078.~~ **Appointment, Limited.** The appointment of a person to a classified position where the work is projected to be of limited duration, for which the person has qualified by examination. (3-16-04)

~~089.~~ **Appointment, Nonclassified.** The appointment of a person to a position exempt from the application of these rules by the provisions of Section 67-5303, Idaho Code. (7-1-87)

~~0910.~~ **Appointment, Permanent.** The appointment of a person to a classified position who has been certified by the appointing authority to have successfully completed the required probationary period and whose employment is permanent, subject to removal or discipline only under the provisions of Title 67, Chapter 53, Idaho Code, and the rules of the Division of Human Resources and Idaho Personnel Commission. (3-16-04)

~~101.~~ **Appointment, Probationary.** The appointment of a person to a classified position for which the person has qualified by examination but is serving a work trial period as a condition for certification to permanent appointment. (4-5-85)

~~112.~~ **Appointment, Project Exempt.** The appointment of a person to a nonclassified position established under federal grants, which by law restricts employment eligibility to specific individuals or groups on the basis of non-merit selection requirements. (Ref. Section 67-5303(m), Idaho Code) (3-16-04)

~~123.~~ **Appointment, Provisional.** The appointment of a person to a position in classified service for which the person has not qualified by examination pending the establishment of a register for the classification of such position. (3-16-04)

~~134.~~ **Appointment, Seasonal.** An appointment to a regular position in classified service with intermittent work periods. (Ref. Section 67-5302(31), Idaho Code) (3-16-04)

145. **Appointment, Temporary.** The appointment of a person to a nonclassified position which is of a limited duration, and in which hours worked will not exceed one thousand three hundred eighty-five (1,385) hours during any twelve (12) month period for any one (1) agency. Temporary appointments may occur for intermittent periods of time and include recurring assignments. (Ref Section 67-5302(33), Idaho Code) (5-8-09)

156. **Base Pay.** The rate paid for performing a job, excluding bonuses, shift differentials, overtime or other compensation premiums. (5-8-09)

167. **Certifiable Range.** An examination score and a rank on an eligibility register sufficiently high to be among the top twenty-five (25) available names, plus names of all individuals with scores identical to the twenty-fifth ranking eligible, for certification to fill a position in the classification for which the register was established. (4-7-11)

178. **Classified Service.** That body of positions in state agencies subject to Title 67, Chapter 53, Idaho Code, as defined therein and excludes temporary, project exempt, and nonclassified appointments. (5-8-09)

189. **Commission.** As utilized in these rules, refers to the Idaho Personnel Commission as established in Section 67-5307, Idaho Code. (5-8-09)

190. **Compensation Plan.** The overall system of salary administration for classified service including Sections 67-5309B and 67-5309C, Idaho Code; the classification and compensation schedules, Division of Human Resources and Idaho Personnel Commission rules and policies, and agency policies governing employee pay. (5-8-09)

201. **Compensation Schedule.** The pay grades established by the Division of Human Resources and associated rates of pay. (Ref. Section 67-5309B, Idaho Code) (5-8-09)

212. **Consultant.** An independent contractor who provides professional or technical advice, counsel, or service. (Ref. Rule Section 050) (5-8-09)

23. **Disabled Veteran.** Those veterans separated under honorable conditions who: ()

a. Have served on active duty in the armed forces and have a current service-connected disability rating of ten percent (10%) or more or are receiving compensation related to a service-connected disability including retirement benefits or pension from the military or the department of veterans affairs; or ()

b. Are Purple Heart recipients. (Ref. Section 65-502(4), Idaho Code) ()

224. **Dismissal.** The separation of an employee from classified service with cause assigned by the appointing authority pursuant to Section 190 of these rules. (5-8-09)

235. **Due Process.** As related to Idaho's Personnel System for permanent classified employees, the activities required to address an individual's constitutional right to notice and an opportunity to be heard. (Ref. Section 67-5315, Idaho Code) (3-16-04)

246. **Employment History.** The information available to the public without the employee's consent in accordance with Section 9-340(C), Idaho Code, for every agency for which a current or former public official works, including the official reasons for separation from employment but not including accrued leave balances or usage. (5-8-09)

257. **Examination.** The application of written tests, oral interviews, performance tests, investigation, physical evaluation, evaluation of education and experience, or any other measure of job-related knowledge and ability, including performance in probationary periods. (4-5-85)

(BREAK IN CONTINUITY OF SECTIONS)

012. DEFINITIONS -- K THROUGH O.

Each of the terms defined in these rules will have the meaning given herein unless a different meaning is clearly required by the context. Additional definitions are contained in Section 67-5302, Idaho Code. (5-8-09)

01. Key Employee. An individual specifically hired for an at-will or nonclassified position for which there is no, or only a limited, selection process. Examples may include a private secretary or deputy to an official who holds a confidential relationship to the appointing or employing officer. (Ref. Section 65-502(5), Idaho Code) (5-8-09)

02. Layoff. An involuntary reduction in hours of work or separation of an incumbent in the classified service either by reduction in force due to shortage of work or funds, or abolishment of positions. (4-5-85)

03. Light or Limited Duty. A general term describing a temporary limited assignment in relation to recovery from injury, illness or other limiting condition as approved by the appointing authority. (3-16-04)

04. Merit Increase. The advancement of an employee's compensation within a pay grade based upon performance in accordance with Section 67-5309B(3) and (4), Idaho Code. (~~5-8-09~~)()

05. Merit Increase Matrix. A pay distribution tool used to advance employee pay based on performance and market data. (5-8-09)

06. Military Duty. Training and service performed by an inductee, enlistee or reservist or any entrant into the armed forces of the United States, not including active duty training as a reservist in the armed forces of the United States or as a member of the National Guard of the United States, when the call is for training only. (Ref. Section 65-502(6), Idaho Code) (5-8-09)

07. Minimum Qualification Specialty. A minimum qualification required for one (1) or more positions in a classification that is in addition to the other minimum qualifications required for all positions in the classification. (3-16-04)

08. Occasional or Sporadic Work. Work that is voluntarily performed by an employee in a different capacity from the employee's regular work and is infrequent, irregular or occurring in scattered instances. (7-1-87)

09. On-Call Time. Time when an employee is required to carry a pager, cellular phone, or to leave work at home or with the agency where the employee may be reached if needed to work, and the employee can use the time effectively for personal purposes. (5-8-09)

013. DEFINITIONS -- P THROUGH Z.

Each of the terms defined in these rules will have the meaning given herein unless a different meaning is clearly required by the context. Additional definitions are contained in Section 67-5302, Idaho Code. (5-8-09)

01. Pay Line Exception. A temporary assignment of pay grade, pursuant to Section 67-5309D, Idaho Code, in excess of the pay grade allocated pursuant to Section 67-5309B, Idaho Code, as approved by the administrator. (5-8-09)

02. Permanent Employee. An employee in the classified service who has successfully completed entrance probation. Permanent employees remain subject to separation as set forth in these rules and Section 67-5309(n), Idaho Code. (5-8-09)

03. Promotion. The advancement through the competitive process of an employee with permanent status from a position which he occupies in one (1) classification to a position in another classification having a higher paygrade. (5-8-09)

04. Reduction in Pay. A reduction of an employee's salary from one (1) pay rate to a lower rate within the pay grade to which the employee's classification is allocated. (3-16-04)

05. Register. A list of names of persons or the name of one (1) person who has been determined to be

eligible for employment in a classification on the basis of examination and merit factors as established by the administrator. An adequate register lists at least five (5) names of eligible candidates currently available for consideration for each vacancy in the classification for which the register was established. (3-16-04)

06. Resignation. The voluntary quitting or abandonment of state employment, excluding retirement. (5-8-09)

07. Respondent. The party whose interests are adverse to those of the appellant. (7-1-93)

08. Salary Equity Increase. The advancement of an employee's compensation within a pay grade based upon factors such as market demand, compression within the agency or classification, or inequities, and the employee's performance, in accordance with Section 67-5309B(3), Idaho Code. ()

089. Suspension. An enforced period of absence, with or without pay, for disciplinary purposes, for felony charges, or pending investigation of charges made against an employee pursuant to Section 190 of these rules. (5-8-09)

0910. Termination. The separation of an entrance or voluntary probationary employee from classified service for unsatisfactory service during the probationary period without cause assigned by the appointing authority pursuant to Section 152 of these rules. (5-8-09)

101. Transfer. A change of work location of an employee in which the employee changes from one (1) position to another in the same classification or to another classification in the same pay grade. (3-16-04)

112. Underfill. ~~The filling of a classification of position with an employee in a classification of lower pay grade to accommodate a training period as approved by the administrator.~~ Appointment to a position established at a higher classification while being compensated at a lower pay grade during completion of a training plan. Underfills must be approved in advance by the administrator. (3-16-04)()

123. USERRA. Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. Sections 4301 through 4333. Prohibits employment discrimination against persons because of their service in the Armed Forces Reserve, the National Guard, or other uniformed services. (5-8-09)

14. Veteran. Any person who has been discharged or released from active duty in the armed forces under honorable conditions provided they have served on active duty for a minimum of one hundred eighty (180) consecutive days. "Active duty" means full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the secretary of the military department concerned. (Ref. Section 65-502(17), Idaho Code) ()

135. Workweek. A period of seven (7) consecutive days beginning 12:01 a.m. Sunday. (Ref. Section 073) (12-10-90)

(BREAK IN CONTINUITY OF SECTIONS)

020. VETERANS PREFERENCE.
Except for key employee positions, preference must be given to qualified veterans ~~in~~ as defined by Section 65-502, Idaho Code who meet the minimum qualifications for a position at initial employment and for retention. (5-8-09)(7-1-13)T

01. Qualified Veteran. ~~To receive the preference, the person must have:~~ (5-8-09)

~~a. Served on active duty in the armed forces during a war, in a campaign, or expedition for which a campaign badge has been authorized, or served on active duty during the period beginning April 28, 1952 and ending July 1, 1955;~~ (5-8-09)

~~b. Served on active duty as defined in 38 U.S.C. Section 101(21) at any time in the armed forces for a period of more than one hundred eighty (180) consecutive days, any part of which occurred after January 31, 1955 and before October 15, 1976; (5-8-09)~~

~~e. Served on active duty as defined in 38 U.S.C. Section 101(21) in the armed forces during the period beginning on August 2, 1990 and ending on January 2, 1992; (5-8-09)~~

~~d. Served on active duty as defined in 38 U.S.C. Section 101(21) at any time in the armed forces for a period of more than one hundred eighty (180) consecutive days, any part of which occurred during the period beginning on September 11, 2001 and ending on the date prescribed by Presidential proclamation or by law as the last date of Operation Iraqi Freedom. (Ref. Section 67-502(14), Idaho Code, and 5 U.S.C. Section 2108); or (5-8-09)~~

~~e. Served as may be further defined in 38 U.S.C. Section 101(11). (5-8-09)~~

021. Disabled Veteran Defined (for Preference Points on Competitive Exam) Initial Appointment. ~~Disabled veterans, Purple Heart recipients, and their spouses, unmarried widows, or unmarried widowers, or spouses, when qualified under state law will have additional points added to a passing score and placed on the register in accordance with the provisions set forth in~~ Section 102 of these rules. (Ref. Rule Subsection 093.03, and Sections 65-502(2), 503, and 504(3), and 67-5309(f), Idaho Code) (5-8-09)()

032. Retention. Veterans (as defined in Title 65, Chapter 5, Idaho Code) will receive ~~the equivalent of three (3) years of satisfactory service in~~ additional points awarded towards the total calculation of retention points in a reduction of work force determination. (Ref. Rule Section 141 and Section 65-501, Idaho Code) (5-8-09)()

(BREAK IN CONTINUITY OF SECTIONS)

067. RECLASSIFICATION OF POSITIONS.

01. Procedure. Positions may be reclassified in the same pay grade, upward, or downward as determined by an analysis by ~~the~~ Division of Human Resources' ~~staff~~ of the duties and responsibilities assigned by appointing authorities to specific positions. An incumbent occupying a reclassified position shall be properly classified by an appointing authority within thirty (30) calendar days of being notified by the administrator that the duties and responsibilities assigned to the position are not properly classified. (4-5-85)()

02. Effective Date. Reclassifications of positions shall not be effective until they are approved by the administrator, but may be retroactive to the beginning of the pay period during which approval is granted. Reclassification of an employee shall not precede the effective date of the reclassification of the position. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

071. MERIT INCREASE MATRIX.

Salary increases must be based on a merit increase matrix approved by the Division of Human Resources. Shift and geographic premium pay, bonuses, reinstatements, transfers, promotions, salary equity increases, and recruitment and retention awards are not subject to a matrix. (5-8-09)()

072. OPERATION OF COMPENSATION PLAN.

01. Authorized Pay Rate. No employee in the state classified service will be paid at a rate less than the minimum nor greater than the maximum rate of the pay grade assigned to the classification. (5-8-09)

02. Starting Salary. The starting salary for a new appointee may be anywhere within the pay grade assigned to the employee's classification and is at the appointing authority's discretion considering available budget, market, and relation to existing staff salaries. (5-8-09)

03. Payline Exceptions. Temporary assignments to a new pay grade may be made by the administrator. Such assignments apply to an entire classification for the purpose of recruitment or retention and will be reviewed annually to determine the need for continuance. (5-8-09)

04. Salary Equity Increases. An appointing authority may, with approval by the administrator, advance an employee's salary within a pay grade based upon factors such as market demand, to address compression within an agency or classification, or inequities. In accordance with Section 67-5309B(3), Idaho Code, the employee's performance must be considered. ()

045. Salary After Reappointment from Layoff. Employees appointed by the agency that laid them off (Ref. Rule Subsection 101.01 and Section 146) will be paid in the current pay grade for the classification to which reappointed or at the same payrate the employee received immediately preceding layoff, whichever is greater, but not to exceed the maximum of the current pay grade. (5-8-09)

056. Salary Upon Transfer. (7-10-88)

a. A transfer between agencies (Ref. Rule Section 125) in the same classification or one of equal pay grade does not require a change in the employee's salary, but a lower or higher rate may be negotiated between the employee and the appointing authority. (5-8-09)

b. If the transfer is to a classification of lower pay grade (demotion), the employee's salary is negotiable between the employee and appointing authority within the lower pay grade. (3-16-04)

067. Salary Upon Reinstatement. Unless related to reemployment after a lay off, the salary of a reinstated employee (Ref. Rule Section 124) is negotiable between the employee and appointing authority in the current pay grade for the classification in which the employee has reinstatement privileges. (5-8-09)

078. Salary Upon Downward Reassignment. When a classification is reassigned downward the employee's salary will be protected to the maximum within the new pay grade. (3-16-04)

089. Salary Upon Return from Military Duty. An employee who returns to state service from active military duty in accordance with the provisions of Section 65-508, Idaho Code, and USERRA will be paid at the comparable rate in the current pay grade for the classification to which he was assigned prior to leaving for military service. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

101. TYPES OF ELIGIBILITY REGISTERS.

There are four (4) kinds of eligibility registers: (4-5-85)

01. Reemployment Preference Registers. Registers with reemployment preference for a given classification will contain the names of classified employees of permanent status who have been laid off except limited service appointments. (~~See Section Ref. Rules 140 of these rules and 144.~~ (4-7-11)())

02. Agency Promotional Registers. Agency promotional registers for a given classification will contain the names of classified employees in a given agency who successfully passed an agency promotional examination for the class. (Ref. Rule Subsection 086.05) (5-8-09)

03. Statewide Promotional Registers. Statewide promotional registers for a given classification will contain the names of all classified employees in all state agencies who successfully passed a statewide promotional examination for the class. (Ref. Rule Subsection 086.05) (5-8-09)

04. Open Competitive Registers. Open competitive registers for a given classification will contain the

names of applicants who successfully passed an open competitive examination for the classification. (5-8-09)

102. PLACEMENT ON REGISTER.

01. Score Order. Eligible candidates will be placed on the register for a given classification ranked in descending numerical order based on their final score on the examination for such classification. (5-8-09)

02. Veterans' Preference. Eligible veterans or surviving spouses entitled to five (5) point preference will be placed on the open competitive register in accordance with their final score on the examination augmented by preference points. (Ref. Rule Subsection 093.03 and Section 65-504, Idaho Code) (5-8-09)

03. Disabled Veterans' Preference. Preference will be awarded to disabled veterans as follows: ()

a. ~~Eligible ten percent (10%) or more of~~ Disabled veterans, Purple Heart recipients, ~~or surviving~~ spouses of any eligible disabled veterans who cannot qualify for any public employment because of a service-connected disability, and unmarried widows or widowers of disabled veterans entitled to ten (10) point preference will be placed on the open-competitive register in order of their final score on the examination augmented by preference points. (Ref. Rule Subsection 093.03 and Sections 65-503 and 65-504, Idaho Code) ()

b. Disabled ~~veterans~~ veterans who have a current service-connected disability of thirty percent (30%) or more will be offered an interview when their final score on the hiring list places them within the top twenty-five (25) qualified candidates. If more than ten (10) disabled veterans with a disability rating of thirty percent (30%) or ~~greater disabled veterans~~ more place in the top twenty-five (25) qualified scores of a hiring list, at least ten (10) will be offered an interview. (Ref. Rule Subsection 093.03 and Section 65-504, Idaho Code) ~~(3-29-12)~~()

04. Veterans' Preference Points for Initial Appointment Only. The additional points added by reason of veterans' preference will be used the first time a qualified veteran is hired by a state agency and not for the purpose of promotions. (Ref. Section 65-504, Idaho Code) Initial appointments do not include: (5-8-09)

- a.** Jobs held by patients, inmates, or students employed at a state institution; (5-8-09)
- b.** Temporary or casual employment; or (5-8-09)
- c.** An office filled by election. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

109. CERTIFICATION AND SELECTION.

Whenever a vacancy in a classified position is to be filled by a competitive recruitment process, the appointing authority shall make selection from a hiring list created from eligibility registers certified by the Division of Human Resources' ~~staff~~. Non-promotional internal or external transfers or reinstatements do not require registers certified by the Division of Human Resources. ~~(3-16-04)~~()

110. NUMBER OF NAMES ON REGISTER.

The Division of Human Resources' ~~staff~~ shall certify a hiring list from the eligibility register, in the order of their scores, a sufficient number of names so that the appointing authority shall be able to select for appointment from among twenty-five (25) eligible candidates for each position to be filled. If appointments are to be made to more than one (1) position, one (1) additional name shall be added for each vacancy so that the appointing authority shall have twenty-five (25) names to consider for each vacancy. The names of all eligible candidates with scores identical to the twenty-fifth ranking eligible candidate on the register shall be provided to appointing authorities for selection purposes. ~~(4-7-11)~~()

(BREAK IN CONTINUITY OF SECTIONS)

141. CALCULATION OF RETENTION POINTS.

There will be an evaluation of all employees in the classification in the agency or organizational unit affected by the reduction in force based on a retention point system. Retention points are derived from experience as described in performance evaluations, ~~and~~ classified credited state service, and veterans preference as described in Subsection 141.03. Qualified veterans are given preference through additional retention points. (Ref. Subsection 141.03). The appointing authority will determine a process for the impartial assessment of evaluations to assign points as follows:

Exemplary Performance	-	.100 points
Solid Sustained Performance	-	.075 points
Achieves Performance Standards	-	.050 points
Does Not Achieve Performance Standards	-	.0 points

~~(5-8-09)~~()

01. No Performance Evaluation on File for a Twelve-Month Period. All credited state service for which there is no performance evaluation will receive seventy-five thousandths (.075) points per hour. A supervisor's failure to document performance in a timely manner cannot be used to disadvantage an employee during retention point calculation. (5-8-09)

a. Grace period. Supervisors have ninety (90) days after each two thousand eighty (2,080) hours an employee works to complete the performance evaluation documentation. During that ninety (90) day time frame, the evaluation may be written to cover the two thousand eighty (2,080) hours or extended to also cover the time frame up to the date of the evaluation. (3-16-04)

b. Changes in prior periods not allowed. Once an evaluation has been signed by the supervisor, employee, manager, and other applicable reviewers, the document may not be changed, unless the change is a result of a problem solving dispute resolution. (3-16-04)

02. Calculation of Retention Points Since Last Evaluation. The most recent performance evaluation should be used to pro-rate retention points when calculating credited state service since that evaluation, unless that evaluation occurred more than two thousand eighty (2,080) hours from the date of calculation. In such cases, points are calculated in conformance with Subsection 141.01 of these rules. (5-8-09)

03. Qualified Veterans Preference. Veterans as defined in Title 65, Chapter 5, Idaho Code, will receive preference by the addition of retention points equivalent to three (3) years of service at a level that achieves performance standards. (Ref. Section 65-501, Idaho Code) ~~(5-8-09)~~()

04. Calculation Date Cutoff. No points will be calculated for the sixty (60) days prior to the effective date of the layoff. (3-16-04)

05. Audit of Retention Points. Each employee is entitled to an audit of retention points by an independent auditor designated by the administrator in cases of dispute between the appointing authority and the employee. The request for audit must be filed with the appointing authority within five (5) calendar days of the employee's receipt of layoff notification. The decision of the independent auditor is binding on both parties unless an appeal is filed within thirty-five (35) calendar days from the date of the auditor's notification to the affected parties. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

180. ~~**NONDISCIPLINARY DEMOTION REQUIRED. (RESERVED)**~~

~~An appointing authority shall make a nondisciplinary demotion when the position occupied by an employee is reclassified to a classification allocated to a lower pay grade in accordance with assigned responsibilities pursuant to Rule 067.~~ (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

190. **DISCIPLINARY ACTIONS.**

01. Cause for Disciplinary Actions or Separation From State Service. Dismissal, suspension, demotion, or the reduction in pay, of a classified employee, may occur for any of the following causes during the employee's employment: (5-8-09)

a. Failure to perform the duties and carry out the obligations imposed by the state constitution, state statutes, or rules of the agency or the Division of Human Resources and Idaho Personnel Commission. (5-8-09)

b. Inefficiency, incompetency, or negligence in performing duties, or job performance that fails to meet established performance standards. (5-8-09)

c. Physical or mental incapability for performing assigned duties, if a reasonable accommodation cannot be made for the disabling condition. (5-8-09)

d. Refusal to accept a reasonable and proper assignment from an authorized supervisor. (4-5-85)

e. Insubordination or conduct unbecoming a state employee or conduct detrimental to good order and discipline in the agency. (5-8-09)

f. Intoxication or being under the influence of alcohol, or the misuse of medications or controlled substances, while on duty. (5-8-09)

g. Careless, negligent, or improper use or unlawful conversion of state property, equipment, or funds. (4-5-85)

h. Use of any influence which violates the principles of the merit system in an attempt to secure a promotion or privileges for individual advantage. (4-5-85)

i. Conviction of official misconduct in office, or conviction of any felony, or conviction of any other crime involving moral turpitude. (4-5-85)

j. Acceptance of gifts in exchange for influence or favors given in the employee's official capacity. (5-8-09)

k. Habitual pattern of failure to report for duty at the assigned time and place. (4-5-85)

l. Habitual improper use of sick leave. (4-5-85)

m. Unauthorized disclosure of confidential information from official records. (4-5-85)

n. Absence without leave. (4-5-85)

o. Misstatement or deception in application for employment. (4-5-85)

p. Failure to obtain or maintain a current license or certificate lawfully required as a condition in performance of duties. (4-5-85)

q. Prohibited participation in political activities. (Ref. Section 67-5311, Idaho Code) (4-5-85)

02. **Suspension for Investigation.** An appointing authority may ~~suspend with pay~~ place an employee on administrative leave for investigation of disciplinary causes enumerated in Subsection 190.01 of these rules. Each suspension for investigation will be superseded by reinstatement to duty, dismissal, ~~or~~ disciplinary demotion, or suspension within thirty (30) calendar days of the suspension for investigation or within an extension of an additional thirty (30) calendar days approved by the administrator. Further extensions may be granted with the approval of the Administrator. (5-8-09)()

03. **Disciplinary Suspension.** An appointing authority may suspend without pay an employee for discipline for causes enumerated above. Disciplinary suspension of an employee with permanent status is subject to appeal by the employee to the Commission. (5-8-09)

04. **Suspension on Felony Charges.** An appointing authority may suspend without pay an employee upon the issuance of a complaint, an information or indictment for felony charges. Such suspensions may remain in effect during the time such charges are pending. Full reinstatement of all benefits and salary that the employee would have otherwise been entitled must be provided by the appointing authority to the employee upon a subsequent finding that charges or information were without grounds or the employee was not found guilty. For the purpose of this rule, a judgment withheld under Rule 33(d) of the Idaho Rules of Criminal Procedure is a conviction. (5-8-09)

05. **Notice to Administrator.** Whenever an appointing authority considers it necessary to take disciplinary action against an employee, he must notify the employee and the administrator concurrently in writing; and must set forth the specific rules violated and the reasons for the action. Suspensions with pay for investigation (Ref. Rule Subsection 190.02) may be made without prior notice to the employee; in this case, the appointing authority must notify the administrator as soon as practical. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

210. PERFORMANCE EVALUATIONS.

01. **Performance Evaluations.** Each agency ~~must adopt and maintain a system of employee performance evaluations provided it meets the~~ shall use the statewide online performance evaluation system; however, another system may be used, provided it meets the basic objectives of the state's online performance evaluation system as approved in advance by the administrator. Agency records and supporting documentation are subject to review by the Division of Human Resources and the employee's overall performance rating must be transmitted to the administrator. (5-8-09)()

02. **Approval of Form.** The Division of Human Resources' staff will make available a standard format for this purpose of the statewide online performance evaluation system. An appointing authority may utilize another form provided it meets the basic performance criteria and ratings and is approved in advance by the administrator. (5-8-09)()

03. **Purpose.** The purpose of performance evaluation is to provide an objective evaluation by the immediate supervisor of an employee's performance in comparison with established expectations for the position; and to identify an employee's strengths and weaknesses and where improvement is necessary. All performance evaluations must be discussed with affected employee who will be allowed opportunity to submit written comments regarding the evaluation contents. (5-8-09)

04. **Use of Evaluations.** Performance evaluations should be used in connection with promotions, transfers, demotions, retentions, separations, and reassignments (Ref. Section 67-5309(h), Idaho Code); and used as the affirmative certification for merit increases, and bonuses, and salary equity increases (Ref. Section 67-5309B, Idaho Code); and for certifying a probationary employee to permanent status (Ref. Rule Section 151). Other uses of performance evaluations are optional with the appointing authority. (5-8-09)()

05. Evaluation Schedule. All classified employees must be evaluated ~~after one thousand forty (1,040) hours of credited state service from the date of initial appointment or promotion and after each~~ for their performance during probationary periods for appointments and promotions and for every two thousand eighty (2,080) hours of credited state service thereafter (generally, an annual basis). (Ref. Sections 67-5309(h) and (j), 67-5309B(6), Idaho Code.) Part-time employees must be evaluated on an annual basis. (5-8-09)()

06. Retention of Evaluation. A copy of the performance evaluation must be retained in agency records, and a copy must be furnished to the employee. ~~The performance rating must be transmitted to the administrator. Agency records and supporting documentation are subject to review by the Division of Human Resources. All performance evaluation documents must be copied and forwarded with the employee when an interagency promotion, demotion or transfer occurs.~~ (5-8-09)()

07. Supervisors' Requirements. Supervisors are required to manage performance on a consistent basis including completion of performance evaluations on all employees under their direct supervision. (Ref. Section 67-5309B(6), Idaho Code) (3-16-04)()

211. -- 219. (RESERVED)

220. RECORDS.

01. Employee Service Records. (7-1-93)

a. For each employee in classified service, the Division of Human Resources maintains a service record which must include all personnel transactions pertinent to the employee's employment history. (Ref. Section 67-5309(o), Idaho Code) (5-8-09)

~~**b.** Service records or a facsimile thereof for classified employees must be maintained permanently by the administrator.~~ (5-8-09)

eb. Any employee may at all reasonable times during business hours review his service record maintained in the Division of Human Resources or maintained in any agency. Except for material used to screen and test for employment, all information maintained in an employee's service record must be made available to the employee or designated representative upon request. File contents may be corrected if found in error according to the procedure contained in Section 9-342, Idaho Code. (5-8-09)

02. Administrative Records. The administrator must permanently maintain a record of the proceedings of the Commission and a record of all hearings of appeals. (5-8-09)

03. Employee Personnel Action Documents. The appointing authority must furnish each employee with notice of every personnel action affecting the employee's status, pay, tenure, or other terms and conditions of employment, including a copy of their performance evaluations. (5-8-09)

04. Transfers, Reemployment and Promotions Between Agencies. When an employee seeks a transfer, reemployment, or promotion between agencies, the appointing authority of the hiring agency, or designee, is entitled to examine the employee's service record and performance information before the hiring decision is made. (Ref. Section 67-5309(o), Idaho Code) (4-7-11)

a. All performance evaluation documents must be copied by the former agency and forwarded to the new agency when an interagency promotion, demotion, or transfer occurs. ()

(BREAK IN CONTINUITY OF SECTIONS)

250. SPECIAL LEAVES.

01. Leave of Absence Without Pay. (7-1-93)

a. Approval. In addition to workers' compensation, family medical leave, disability, or other statewide leave policies, the appointing authority may grant an employee leave without pay for a specified length of time when such leave would not have an adverse effect upon the agency. The request for leave must be in writing and must establish reasonable justification for approval. (5-8-09)

b. Reemployment. The appointing authority approving the leave of absence assumes full responsibility for returning the employee to the same position or to another position in a classification allocated to the same pay grade for which the employee meets minimum qualifications. (7-1-87)

c. Exhaustion of Accrued Leave. Unless prohibited by workers compensation, family medical leave, disability, or other statewide leave policies, the appointing authority has discretion on whether the employee is required to exhaust accrued vacation leave, earned administrative leave or compensatory time off for overtime before commencing leave without pay. (Ref. Section 240) (5-8-09)

d. Resignation. If vacation leave, earned administrative leave and compensatory time off for overtime are not exhausted and the employee resigns from state service while on leave, he will be paid for such accruals in accordance with Sections 67-5334 and 67-5328, Idaho Code. (5-8-09)

02. Leave Defaults. When an employee does not have accrued sick leave to cover an entire absence the following leave types will be used to the extent necessary to avoid leave without pay: accrued compensatory time and vacation. If abuse of sick leave is suspected see Subsection 240.07 of these rules. (5-8-09)

03. Military Leave With Pay. Employees who are members of the National Guard or reservists in the armed forces of the United States engaged in military duty ordered or authorized under the provisions of law, are entitled each calendar year to one hundred twenty (120) hours of military leave of absence from their respective duties without loss of pay, credited state service or evaluation of performance. Such leave is separate from vacation, sick leave, holiday, or compensatory time off for overtime. (Ref. Section 46-216, Idaho Code). (5-8-09)

04. Military Leave Without Pay. An employee whose employment is reasonably expected to continue indefinitely, and who leaves his position either voluntarily or involuntarily in order to perform active military duty, has reemployment rights as defined in Subsection 124.05 of these rules. The employee will either be separated from state service or placed in "inactive" status, at the option of the appointing authority. (5-8-09)

05. Leave of Absence With Pay. A period of absence from duty with the approval of the appointing authority, or as required or allowed by law or these rules, during which time the employee is compensated. Leaves of absence with pay have no adverse effect on the status of the employee and include the following leaves: (5-8-09)

a. Vacation leave; (5-8-09)

b. Sick leave; (5-8-09)

c. Special leave situations; ~~and~~ ~~(5-8-09)~~()

d. Compensatory time off for overtime worked; ~~and~~ ~~(5-8-09)~~()

e. Administrative leave. ()

06. Court and Jury Services and Problem-Solving and Due Process Leave. (7-1-98)

a. Connected with Official State Duty. When an employee is subpoenaed or required to appear as a witness in any judicial or administrative proceeding in any capacity connected with official state duty, he is not considered absent from duty. The employee is not entitled to receive compensation from the court. Expenses (mileage, lodging, meals, and miscellaneous expenses) incurred by the employee must be reimbursed by his respective agency in accordance with agency travel regulations. (5-8-09)

b. Private Proceedings. When an employee is required to appear as a witness or a party in any

proceeding not connected with official state duty, the employee must be permitted to attend. The employee may use accrued leave or leave without pay. (5-8-09)

c. Jury Service. When an employee is summoned by proper judicial authority to serve on a jury, he will be granted a leave of absence with pay for the time which otherwise the employee would have worked. The employee is entitled to keep fees and mileage reimbursement paid by the court in addition to salary. Expenses in connection with this duty are not subject to reimbursement by the state. (5-8-09)

d. Problem-solving and due process procedures. Any employee who has been requested to serve as a mediator as provided by an agency problem-solving or due process procedure or to appear as a witness or representative during such a proceeding will be granted leave with pay, without charge to vacation leave or compensatory time off for overtime, to perform those duties. (5-8-09)

e. Notification. An employee summoned for court and jury service or requested to serve as a ~~grievance panelist~~, witness, or representative must notify his supervisor as soon as possible to obtain authorization for leave of absence. ~~(5-8-09)~~()

07. Religious Leave. Appointing authorities will make reasonable accommodations to an employee's need for leave for religious observances. Such leave is charged to the employee's accrued vacation leave or compensatory time off for overtime. (5-8-09)

08. Leave During Facility Closure or Inaccessibility. (7-1-93)

a. Authorization. When a state facility is closed or declared inaccessible because of severe weather, civil disturbances, loss of utilities or other disruptions, affected employees are authorized administrative leave ~~of absence with pay~~ to cover their scheduled hours of work during the closure or inaccessibility. ~~(5-8-09)~~()

b. Early release. When the appointing authority or designated representative authorizes early release of employees, the resulting time off will be charged to administrative leave ~~of absence with pay~~. ~~(5-8-09)~~()

09. Red Cross Disaster Services Leave. Employees who have been certified by the American Red Cross as disaster service volunteers will be granted up to one hundred twenty (120) hours of paid leave in any twelve (12) month period to participate in relief services pursuant to Section 67-5338, Idaho Code. (5-8-09)

10. Employee Assistance Program Leave. Up to two (2) hours per visit will be granted for utilization of the Employee Assistance Program (EAP) during normal working hours. This leave is limited to the number of free program visits provided in the state's Behavioral Health Program. (5-8-09)

11. Bone Marrow and Organ Donor Leave With Pay. (5-8-09)

a. Approval. Upon request, a full-time employee will be granted five (5) work days' leave with pay to serve as a bone marrow donor or thirty (30) work days' leave with pay to serve as an organ donor. The employee must provide the appointing authority with written verification that the employee is the person serving as the donor. Paid leave, as provided in these rules, is limited to one-time bone marrow and one-time organ donor leave per employee. (Ref. Section 67-5343, Idaho Code) (5-8-09)

b. Use. An employee who is granted such leave of absence will receive compensation without interruption during the leave period. For purposes of determining credited state service, pay advancement, performance awards, or any benefit affected by a leave of absence, the service of the employee is considered uninterrupted by the paid leave of absence. (Ref. Section 67-5343, Idaho Code) (5-8-09)

251. ADMINISTRATIVE LEAVE.

Administrative leave may be granted by an appointing authority for employee investigations, due process procedures, severe weather, emergencies or incidents that could jeopardize agency operations, or the safety of others. Administrative leave for other reasons must be approved by the administrator. ()

~~251.2~~ -- 259. (RESERVED)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.05.01 - USE AND DISCLOSURE OF DEPARTMENT RECORDS

DOCKET NO. 16-0501-1301

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 39-242, 39-5403, 56-221, 56-222, 56-1003, and 56-1004, Idaho Code; also HIPAA: 45 CFR Subpart E, Section 164.510.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 18, 2013.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 U.S. Department of Health and Human Services (HHS) recently modified the HIPAA Privacy Rule. This rule change went into effect March 26, 2013. HHS modified the Privacy Rule to permit a covered entity (such as the Department) to disclose a decedent's health information to family members and others who were involved in the care or payment for care of the decedent prior to death. This rule change permits the Department to use or disclose health information, as allowed by the Privacy Rule.

This does not change the authority of a decedent's personal representative with regard to the decedent's health information. Thus, a personal representative would continue to have a right to access the decedent's health information relevant to such personal representation, and have authority to authorize uses and disclosures of the decedent's health information that are not otherwise permitted or required by HIPAA.

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

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

There is no anticipated fiscal impact to any funds for this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because there is really no negotiable content in this rulemaking. The rule change is being done to clarify the Department's Use and Disclosure rules and bring them into alignment with recent changes in HIPAA. While the rule change will give the Department a little more latitude regarding the release of decedent information, the effect will be minimal.

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 Heidi Graham at (208) 334-5617.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 25, 2013.

DATED this 2nd day of August, 2013.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0501-1301

190. RECORDS OF DECEDENTS.

Records of decedents are confidential for as long as the Department maintains the records, except as needed by: (4-2-08)

- 01. Law Enforcement.** If there is suspicion that the death was the result of criminal conduct. (4-2-08)
- 02. Coroners and Medical Examiners.** Information may be given to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law. (4-2-08)
- 03. Funeral Directors.** Confidential information may be given to funeral directors, consistent with applicable law, as necessary to carry out their duties with respect to the decedent. If necessary to carry out their duties, confidential information may be disclosed to funeral directors prior to and in reasonable anticipation of the individual's death. (4-2-08)
- 04. Personal Representatives.** While records are maintained, the same confidentiality requirements apply to the personal representative of the estate or other legal representative of the deceased individual. Information may be disclosed to such representatives only to the extent necessary to perform their legal function, (4-2-08)
- 05. Family Members and Others.** The Department may disclose health information to a family member, other relative, a close personal friend of the deceased individual, or any other person identified by the deceased individual. Information provided must be directly related to such person's involvement with the individual's care or payment for health care prior to the individual's death, unless doing so is inconsistent with any prior expressed preference of the individual that is known to the Department. ()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.05.06 - CRIMINAL HISTORY AND BACKGROUND CHECKS

DOCKET NO. 16-0506-1302

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202(b), 56-203(2), 56-204A, 56-1004A, 56-1007, 39-1105, 39-1107, 39-1111, 39-1210(10), 39-1211(4), 39-3520 and 39-5604, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 18, 2013.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 rule changes provide clarification of the criminal history and background check application and fingerprint submission requirements and process. Other changes include:

1. Provide an appeal process for individuals whose records are disputed;
2. Update the crime list for disqualifying crimes, and conditional and unconditional denials;
3. Clarify when a clearance may be revoked and actions for noncompliance with rules; and
4. Clarify reporting changes to the Department for change in ownership, location, or name.

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

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

There is no anticipated fiscal impact to any funds due to this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted nor feasible because these rule changes are to clarify current policies and to provide a process to appeal findings. The Department did survey employers that use the Department's website for criminal history and background checks for their input.

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 Fernando Castro, at (208) 332-7999.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 25, 2013.

DATED this 1st day of August, 2013.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0506-1302

060. EMPLOYER REGISTRATION.

01. Initial Registration. Employers required to have Department criminal history and background checks on their employees, contractors, or staff must register with the Department and receive an employer identification number before criminal history and background check applications can be processed or accessed. (7-1-12)()

02. Change in Name or Ownership. When an agency or facility: ()

a. Is acquired by another entity, the new ownership must register as a new employer and provide contact information to obtain a new employer identification number and website access within thirty (30) calendar days of acquisition. ()

b. Changes its name or location, the employer must provide the new name, location, and contact information to the Department within thirty (30) calendar days of the change. ()

(BREAK IN CONTINUITY OF SECTIONS)

130. SUBMISSION OF APPLICATION.

An application for a criminal history and background check must be initiated on the Department's website, submitted, and received by on the Department's website before a criminal history and background check can be processed. The application is pending until the Department issues a clearance or denial, or the individual withdraws the application. *The applicant has two options for processing the application:* (7-1-12)()

~~**01. On-Line Application Process.** *An individual may submit the application through the Criminal History Unit's website at <https://chu.dhw.idaho.gov>. Individuals who submit their application through the website may schedule a fingerprinting appointment at a Department location. At the fingerprinting appointment, the Department will print the application and notarize the individual's signature.* (7-1-12)~~

~~**02. Mail-in Application Process.** *An individual may complete the application provided on the Department's website, print the application, have it notarized, and mail it to the Criminal History Unit with the signed fingerprint card and applicable fee. The application must be mailed to: Criminal History Unit, P. O. Drawer B, Lewiston, ID 83501.* (7-1-12)~~

131. -- 139. (RESERVED)

140. SUBMISSION OF FINGERPRINTS.

The Department's criminal history and background check is a fingerprint-based check. Ten (10) rolled fingerprints must be collected from the individual and submitted to the Department within the time frame for submitting applications as provided in Section 150 of these rules in order for a criminal history and background check request to be processed. The Department must obtain fingerprints electronically at one each of its fingerprint locations, or the Department's fingerprint card must be used. A Department fingerprint card can be obtained by contacting the Criminal History Unit, described in Section 005 of these rules. (7-1-12)()

01. Department Fingerprinting Locations. A fingerprint appointment ~~may be~~ is scheduled at designated Department locations where the Department will collect the individual's fingerprints. A fee may be assessed when an individual misses the scheduled appointment as provided in Section 051 of these rules. The # Locations for the closest Department fingerprint collection office where an individual may submit fingerprints are listed on the Department's website, or you may contact the Criminal History Unit as described in Section 005 of these

rules.

~~(3-26-08)~~()

02. Submitting Fingerprints by Mail. When An individual ~~may~~ elects to have fingerprints collected by a local law enforcement agency or by the applicant's employer, the Department's fingerprint card must be used. The fingerprint card must be completed in accordance with the instructions provided, signed, and mailed along with the completed notarized application and applicable fee to: ~~Criminal History Unit, P. O. Drawer B, Lewiston, ID 83507~~ the address indicated on the Department's website. The notarized application and fees must be received by the Department in the time frame required in Section 150 of these rules. (7-1-12)()

03. Submission of Reprints. In the event that an individual's submitted fingerprints are deemed unreadable by the Department, Idaho State Police, or the FBI, the applicant must comply with a request for reprints from the Department within fifteen (15) calendar days from the date of the notice. Failure to comply with the Department's reprint request will result in the applicant being unavailable to provide services. ()

141. -- 149. (RESERVED)

150. TIME FRAME FOR SUBMITTING APPLICATION AND FINGERPRINTS.

The completed notarized application and fingerprints must be received by the Department within twenty-one (21) days from the date of notarization whether submitted by mail or at a Department fingerprinting location.

(7-1-12)()

01. Availability to Provide Services. The applicant: ()

a. Is available to provide services on the day the application is signed and notarized, as long as the applicant has not disclosed any disqualifying crimes or relevant records. The applicant must provide the Department a copy of the signed and notarized application to validate the date of applicant's availability to provide services. ()

b. is not Becomes unavailable to provide services or be licensed or certified when the notarized application is not received or the fingerprints have not been ~~rolled~~ collected within this time frame. (7-1-12)()

c. Who submits a complete application and fingerprints by mail, and the application is deemed inadequate or incomplete for processing by the Department, is unavailable to provide services until the application is received by the Department completed and corrected. ()

02. Incomplete Application. The criminal history and background check is incomplete and will not be processed by the Department if this time frame is not met. (7-1-12)

03. No Extension of Time Frame. The Department will not extend the twenty-one (21) day time frame, unless the applicant or employer provides just cause. An applicant for employment or employer can not submit a new application for the same purpose, or repeatedly re-sign and re-notarize the original application. (7-1-12)

(BREAK IN CONTINUITY OF SECTIONS)

170. AVAILABILITY TO PROVIDE SERVICES PENDING COMPLETION OF THE CRIMINAL HISTORY AND BACKGROUND CHECK.

An individual is available to provide services pending completion of the criminal history and background check as described in Subsections 170.01 and 170.02 of this rule. The individual must have submitted a signed notarized application and fingerprintings must be completed in the time frame described required in Section 150 of these rules, in order to provide services. (3-26-08)()

01. Employees of Providers, Contractors, Emergency Medical Services (EMS), or the Department. An individual is available to provide services on a provisional basis at the discretion of the employer or EMS Bureau as long as no disqualifying crimes or relevant records are disclosed on the application. The employer

must review the application for any disqualifying crimes listed in Section 210 of these rules or other relevant records listed in Sections 230 and 240 of these rules. The employer ~~then~~ must determine whether the applicant poses a health or safety risk to vulnerable clients before allowing the individual to provide services until a clearance or denial is issued by the Department. (3-26-08)()

02. Individuals Licensed or Certified by the Department. Individuals applying for licensure or certification by the Department are not available to provide services or receive licensure or certification until the criminal history and background check is complete and a clearance is issued by the Department. The following are individuals required to have a clearance prior to providing services: (3-26-08)

- a. Adoption or foster care applicants and adults in the home; (3-26-08)
- b. Certification or licensure applicants; (3-26-08)
 - i. Certified family homes; (3-26-08)
 - ii. Licensed child care providers; (3-26-08)

(BREAK IN CONTINUITY OF SECTIONS)

190. CRIMINAL HISTORY AND BACKGROUND CHECK CLEARANCE.

01. Department Clearance. A criminal history and background check clearance is issued by the Department once all relevant records and findings have been reviewed and the Department has cleared the applicant. The clearance will be published on the Department's website and the individual may print copies of the clearance. The employer must print out the clearance and maintain a copy readily available for inspection. (7-1-12)()

02. Revocation of Department Clearance. An individual's previously issued clearance may be revoked for the following: ()

a. The individual fails to comply with the Department's request to submit to a new criminal history and background check according to Subsection 300.04 of these rules. ()

b. The individual completes a new criminal history and background check and is found to have a criminal or relevant record that results in an inability to proceed action or in a denial as described in Sections 190 or 200 of these rules. ()

191. -- 199. (RESERVED)

200. UNCONDITIONAL DENIAL.

An individual who receives an unconditional denial is not available to provide services, have access, or to be licensed or certified by the Department. (3-26-08)

01. Reasons for an Unconditional Denial. Unconditional denials are issued for: (3-4-11)

- a. Disqualifying crimes described in Section 210 of these rules; (3-4-11)
- b. A relevant record on the Idaho Child Abuse Central Registry with a Level 1 or Level 2 finding; (7-1-12)
- c. A relevant record on the Nurse Aide Registry; ~~or~~ (7-1-12)()
- d.** A relevant record on either the state or federal sex offender registries; or ()

~~d.e.~~ A relevant record on the state or federal Medicaid Exclusion List, described in Section 240 of these rules. (7-1-12)

02. Issuance of an Unconditional Denial. The Department will issue an unconditional denial within fourteen (14) days of completion of a criminal history and background check. (3-26-08)

03. Challenge of Department's Unconditional Denial. An individual has ~~thirty~~ **twenty-eight (3028)** days from the date the unconditional denial is issued to challenge the Department's unconditional denial. The individual must submit the challenge in writing and provide court records or other information which demonstrates the Department's unconditional denial is incorrect. These documents must be filed with the Criminal History Unit described in Section 005 of these rules. ~~(3-4-11)~~ ()

a. If the individual challenges the Department's unconditional denial, the Department will review the court records, documents and other information filed by the individual. The Department will issue a decision within thirty (30) days of the receipt of the challenge. The Department's decision will be a final order under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 152. (3-26-08)

b. If the individual does not challenge the Department's unconditional denial within thirty (30) days, it becomes a final order of the Department under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 152. (3-26-08)

04. No Exemption Review. No exemption review, as described in Section 250 of these rules, is allowed for an unconditional denial. (3-26-08)

05. ~~Final Order Appeal of an Unconditional Denial.~~ Following a challenge of the Department's final order unconditional denial, an individual may appeal the Department's decision under the provisions in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 152, may be appealed in District Court. The request to appeal an unconditional denial does not stay the action of the Department. ~~(3-26-08)~~ ()

201. -- 209. (RESERVED)

210. DISQUALIFYING CRIMES RESULTING IN AN UNCONDITIONAL DENIAL.

An individual is not available to provide direct care or services when the individual discloses or the criminal history and background check reveals a conviction for a disqualifying crime on his record as described in Subsections 210.01 and 210.02 of this rule. (3-26-08)

01. Disqualifying Crimes. The disqualifying crimes, described in Subsections 210.01.a. through 210.01.v. of this rule, or any substantially conforming foreign criminal violation, will result in an unconditional denial being issued. (7-1-12)

a. Abuse, neglect, or exploitation of a vulnerable adult, as defined in Section 18-1505, Idaho Code; (3-26-08)

b. Aggravated, first-degree and second-degree arson, as defined in Sections 18-801 through 18-803, and 18-805, Idaho Code; (3-26-08)

c. Crimes against nature, as defined in Section 18-6605, Idaho Code; (3-26-08)

d. Forcible sexual penetration by use of a foreign object, as defined in Section 18-6608, Idaho Code; (3-26-08)

e. Incest, as defined in Section 18-6602, Idaho Code; (3-26-08)

f. Injury to a child, felony or misdemeanor, as defined in Section 18-1501, Idaho Code; (3-26-08)

g. Kidnapping, as defined in Sections 18-4501 through 18-4503, Idaho Code; (3-26-08)

- h.** Lewd conduct with a minor, as defined in Section 18-1508, Idaho Code; (3-26-08)
- i.** Mayhem, as defined in Section 18-5001, Idaho Code; (3-26-08)
- j.** Manslaughter: (7-1-12)
 - i.** Voluntary manslaughter, as defined in Section 18-4006(1) Idaho Code; (7-1-12)
 - ii.** Involuntary manslaughter, as defined in Section 18-4006(2), Idaho Code; (7-1-12)
 - iii.** Felony vehicular manslaughter, as defined in Section 18-4006(3)(a) and (b), Idaho Code; (7-1-12)
- k.** Murder in any degree or assault with intent to commit murder, as defined in Sections 18-4001, 18-4003, and 18-4015, Idaho Code; (7-1-12)
- l.** Poisoning, as defined in Sections 18-4014 and 18-5501, Idaho Code; (3-26-08)
- m.** Possession of sexually exploitative material, as defined in Section 18-1507A, Idaho Code; (3-26-08)
- n.** Rape, as defined in Section 18-6101, Idaho Code; (3-26-08)
- o.** Robbery, as defined in Section 18-6501, Idaho Code; (3-26-08)
- p.** Felony stalking, as defined in Section 18-7905, Idaho Code; (3-26-08)
- q.** Sale or barter of a child, as defined in Section 18-1511, Idaho Code; (3-26-08)
- r.** Sexual abuse or exploitation of a child, as defined in Sections 18-1506 and 18-1507, Idaho Code; (3-26-08)
- s.** Video voyeurism, as defined in Section 18-6609, Idaho Code; (3-26-08)
- t.** Enticing of children, as defined in Sections 18-1509 and 18-1509A, Idaho Code; (3-26-08)
- u.** Inducing individuals under eighteen (18) years of age into prostitution or patronizing a prostitute, as defined in Sections 18-5609 and 18-5611, Idaho Code; (3-26-08)
- v.** Any felony punishable by death or life imprisonment; or (3-26-08)
- w.** Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-205, 18-306, 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying designated crimes. (3-29-10)

02. Disqualifying Five-Year Crimes. The Department will issue an unconditional denial for an individual who has been convicted of the following described crimes for five (5) years from the date of the conviction for the crimes listed in Subsections 210.02.a. through 210.02.~~j~~ⁱ. of this rule, or any substantially conforming foreign criminal violation: ~~(7-1-12)~~()

- a.** Any felony not described in Subsection 210.01, of this rule; (3-4-11)
- b.** Misdemeanor forgery of and fraudulent use of a financial transaction card, as defined in Sections 18-3123 through 18-3128, Idaho Code; (3-4-11)
- c.** Misdemeanor forgery and counterfeiting, as defined in Sections 18-3601 through 18-3620, Idaho Code; (3-4-11)

- d. Misdemeanor identity theft, as defined in Section 18-3126, Idaho Code; (3-4-11)
 - e. Misdemeanor insurance fraud, as defined in Sections 41-293 and 41-294, Idaho Code; (3-4-11)
 - f. Misdemeanor public assistance fraud, as defined in Sections 56-227 and 56-227A, Idaho Code; (7-1-12)
 - g. Stalking in the second degree, as defined in Section 18-7906, Idaho Code; (7-1-12)
 - h. Misdemeanor vehicular manslaughter, as defined in Section 18-4006(3)(c), Idaho Code; ~~or~~ (7-1-12)()
 - i. Sexual exploitation by a medical care provider, as defined in Section 18-919, Idaho Code; or ()
 - j. Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-205, 18-306, 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying five (5) year crimes. (3-29-10)
- 03. Underlying Facts and Circumstances.** The Department may consider the underlying facts and circumstances of felony or misdemeanor conduct including a guilty plea or admission in determining whether or not to issue a clearance, regardless of whether or not the individual received one (1) of the following: (3-26-08)
- a. A withheld judgment; (3-26-08)
 - b. A dismissal, suspension, deferral, commutation, or a plea agreement where probation or restitution was or was not required; (3-26-08)
 - c. An order according to Section 19-2604, Idaho Code, or other equivalent state law; or (3-26-08)
 - d. A sealed record. (3-26-08)

(BREAK IN CONTINUITY OF SECTIONS)

230. RELEVANT RECORDS RESULTING IN A CONDITIONAL DENIAL.

An individual is not available to provide direct care or services when the individual discloses or the criminal history and background check reveals a relevant record on his record as described Subsections 230.01 and 230.02 of this rule. (3-26-08)

01. Individuals Licensed or Certified by the Department or a Department Employee. A conditional denial may be issued when an individual who is licensed or certified by the Department, or who is a Department employee discloses, or the criminal history and background check reveals, a relevant record as defined in Subsections 230.01.a. through 230.01.f.d. of this rule: (3-4-11)()

~~a. A plea, finding, or adjudication of guilt to any felony or misdemeanor, or any crime other than a traffic violation, that does not result in a suspension of the individual's driver's license; (3-26-08)~~

b.a. A substantiated child protection complaint or a substantiated adult protection complaint; (3-26-08)

b.b. The Department determines there is a potential health and safety risk to vulnerable adults or children; (3-26-08)

b.c. The individual has falsified or omitted information on the application form; ~~or~~ (3-26-08)()

b.d. ~~The individual is on the Nurse Aide Registry with a negative finding; or~~ (3-4-11)

- ~~f.d.~~ The Department determines additional information is required. (3-26-08)
- 02. Employees of Providers or Contractors.** A conditional denial may be issued when an individual who is employed by a provider or contractor discloses, or the criminal history and background check reveals, a relevant record as defined in Subsections 230.02.a. through 230.02.~~eb.~~ of this rule. (~~3-4-11~~)()
- a.** A substantiated child protection complaint or a substantiated adult protection complaint; or (~~3-26-08~~)()
- ~~b.~~ ~~The individual is on the Nurse Aide Registry with a negative finding; or~~ (~~3-4-11~~)
- ~~eb.~~ The Department determines additional information is required. (3-26-08)
- 03. Underlying Facts and Circumstances.** The Department may consider the underlying facts and circumstances of felony or misdemeanor conduct including a guilty plea or admission in determining whether or not to issue a clearance, regardless of whether or not the individual received one (1) of the following: (3-26-08)
- a.** A withheld judgment; (3-26-08)
- b.** A dismissal, suspension, deferral, commutation, or a plea agreement where probation or restitution was or was not required; (3-26-08)
- c.** An order according to Section 19-2604, Idaho Code, or other equivalent state law; or (3-26-08)
- d.** A sealed record. (3-26-08)

(BREAK IN CONTINUITY OF SECTIONS)

270. CRIMINAL OR RELEVANT RECORD - ACTION PENDING.

- 01. Notice of Inability to Proceed.** When the applicant is identified as having a pending criminal action for a crime or relevant record that may disqualify him from receiving a clearance for the criminal history and background check, the Department may issue a notice of inability to proceed. (7-1-12)
- 02. Availability to Provide Services.** The applicant is not available to provide service when a notice of inability to proceed or denial is issued by the Department. Any previous clearance issued by the Department will be revoked as described in Section 190 of these rules. (~~7-1-12~~)()
- 03. Reconsideration of Action Pending.** In the case of an inability to proceed status, the applicant can submit documentation that the matter has been resolved to the Department for reconsideration within one hundred and twenty (120) calendar days from the date of notice. When the Department receives this documentation, the Department will notify the applicant of the reconsideration and issue a clearance or denial. When the Department's reconsideration results in a clearance after review, any previously revoked clearance will be restored as described in Section 190 of these rules. (~~7-1-12~~)()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.05.06 - CRIMINAL HISTORY AND BACKGROUND CHECKS

DOCKET NO. 16-0506-1303 (FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202(b), 56-203(2), 56-204A, 56-1004A, 56-1007, 39-1105, 39-1107, 39-1111, 39-1210(10), 39-1211(4), 39-3520 and 39-5604, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 18, 2013.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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:

Each year, the Criminal History Unit (CHU) experiences a 22% rate of missed fingerprint appointments. The CHU has already taken measures to reduce the no-show rate by improving the scheduling system, educating employers and applicants, and implementing an e-mail reminder notification system. This rule change will provide for a fee to be assessed for missed fingerprint appointments by individuals who are required to have a Department criminal history and background check. The no-show fee is being proposed as a deterrent to that practice and to offset lost productivity due to missed appointments. These rule changes will help alleviate backlogs for fingerprint collection by reducing the need to reschedule and having more availability of appointment times.

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

The Department is adding a no-show fee of \$20 for missed fingerprint appointments.

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 estimates that it will collect \$26,000 in receipts for this no-show fee. The receipts collected will be used to cover current expenditures and will offset federal and general fund spending. The estimated \$26,000 in receipts collected will be offset by a reduction in state general funds of \$12,700 and federal funds of \$13,300.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Department is required under Section 56-1004A, Idaho Code, to have applicants cover the cost of a criminal history check. The Department did survey employers that regularly use the CHU website about whether fees would help alleviate missed appointments and increase the availability of appointments to meet their needs.

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 Fernando Castro, at (208) 332-7999.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 25, 2013.

DATED this 1st day of August, 2013.

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

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 16-0506-1303

051. NO-SHOW FEE FOR MISSED FINGERPRINT APPOINTMENT.

01. No-Show Fee. The Department may assess a no-show fee of twenty dollars (\$20) to an applicant when the applicant misses a scheduled fingerprint appointment. In the event an applicant misses more than one (1) appointment, a no-show fee will be assessed for each missed appointment. ()

02. Cancellation of Appointment. An applicant who cancels an appointment twenty-four (24) hours or more in advance, not including weekends and holidays, will not be assessed a no-show fee. ()

03. Waiver of Fee. The Department may waive the assessed no-show fee for the following: ()

a. Applicant declares financial hardship; or ()

b. Applicant shows good cause or justifiable circumstances for missed fingerprint appointment. ()

04. Completion of Check. The processing of a criminal history and background check may be delayed pending the receipt of the no-show fee. ()

052. -- 059. (RESERVED)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.06.01 - CHILD AND FAMILY SERVICES

DOCKET NO. 16-0601-1302 (FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 56-202(b) and 56-204A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 18, 2013.

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

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

The Department is establishing a process for individuals to obtain confidential information that is on the child protection central registry. This information will only be released with an individual's written consent to obtain such confidential information. The Department is not mandating that individuals and other entities check the child protection central registry as a precondition of employment or non-department licensure. This change aligns IDAPA 16.06.01 with rules pertaining to the public records act and with current practice. The Department is adding a fee of \$20 for a name-based Child Protection Central Registry Check to cover costs. Updates are being made to the mailing process to meet federal regulations for notifications to the ICWA designated agent for a child's tribe.

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

A fee of \$20 is being added for a name-based Child Protection Central Registry check.

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:

It is estimated that 2,100 additional central registry checks will be completed annually. The Department will collect receipts in a projected amount of \$42,000. The receipted amount will cover costs associated with the operating expenses without a need for additional funds. There is no anticipated fiscal impact to the state general fund or need for federal funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Department is establishing a process for individuals to obtain confidential information and determined it was not feasible to negotiate this rulemaking. The Department is not mandating that these checks be done and is aligning these rules with public records requirements and current practice.

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 Miren Unsworth at (208) 334-6925.

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 September 25, 2013.

DATED this 1st day of August, 2013.

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

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 16-0601-1302

051. NOTICE REQUIREMENTS FOR ICWA.

01. Notice of Pending Proceedings -- Who Must be Notified. When there is reason to believe that a child is an Indian child, the initial and any subsequent Notice of Pending Proceedings must be sent to the Indian child's parent(s), custodian(s), and tribe. Notices of Pending Proceedings must be sent to the ICWA Designated Agent for the child's tribe via ~~Certified Mail~~ Registered Mail, Return Receipt Requested. All Notices of Pending Proceedings must be received by the child's parent(s), Indian custodian(s) and tribe at least 10 (ten) days before the proceeding is scheduled to occur. Returned receipts are to be kept in the child's file and made available for review by the court. (3-29-12)()

02. Rights Under a Notice of Pending Proceedings. Notices of Pending Proceedings must also include notice of the tribe's right to intervene; their right to twenty (20) additional days to prepare for the proceedings; the right to appointment of counsel if the parent(s) or Indian custodian(s) are indigent; and the right to examine all documents filed with the court upon which placement may be based. (3-29-12)

03. Notice of Pending Proceedings--When Identity or Location of Parent(s), Indian Custodian(s), or Tribe is Unknown. If the identity or location of the parent(s) or Indian custodian(s) or the tribe is unknown, the Notice of Pending Proceedings must be sent to the Secretary of the Interior by certified mail with a return receipt requested at the following address: Department of the Interior, Bureau of Indian Services, Division of Human Services, Code 450, Mail Stop, 1849 C Street N.W., Washington, D.C. 20240. (3-29-12)

(BREAK IN CONTINUITY OF SECTIONS)

562. CONFIDENTIALITY OF THE CHILD PROTECTION CENTRAL REGISTRY AND REQUESTS TO CHECK THE REGISTRY.

01. Confidentiality of Child Protection Central Registry. The names on the Child Protection Central Registry are confidential and may only be released with the written consent of the individual on whom a ~~Department~~ criminal history and background check is being conducted, ~~in accordance with IDAPA 16.05.06, "Criminal History and Background Checks,"~~ unless otherwise required by federal or state law. No information is released regarding the severity or type of child abuse, neglect, or abandonment. (5-8-09)()

02. Child Protection Central Registry Check Fee. The fee for requesting a name-based check of the Child Protection Central Registry is twenty (\$20) dollars. The request must be accompanied with a signed written consent by the individual whose name is being checked. ()

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.07.17 - ALCOHOL AND SUBSTANCE USE DISORDERS SERVICES**

DOCKET NO. 16-0717-1301

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 39-4605, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearings concerning this rulemaking will be held as follows:

<p>*ORIGINATING LOCATION -- LIVE MEETING* Tuesday, September 10, 2013 12:30 - 2:30 pm (PDT) -- 1:30 - 3:30 pm (MDT)</p>
<p>Idaho Department of Health and Welfare, Central Office Conference Room 3A (3rd floor) 450 West State Street Boise, ID 83702</p>

VIDEOCONFERENCE LOCATIONS	
<p>Region I Office – Coeur d’Alene Main Conference Room 2195 Ironwood Court Coeur d’Alene, ID 83814</p>	<p>Region II Office – Lewiston 1st Floor Conference Rm. 1118 “F” Street Lewiston, ID 83501</p>
<p>Region III Office – Caldwell Owyhee Conference Room (Rm. 226) 3402 Franklin Road Caldwell, ID 83605</p>	<p>Region IV Office – Boise Room 142 1720 Westgate Drive, Suite A Boise, ID 83704</p>
<p>Region V Office – Twin Falls Room 116 823 Harrison Twin Falls, ID 83301</p>	<p>Region VI Office – Pocatello Room 225 421 Memorial Drive Pocatello, ID 83201</p>
<p>Region VII Office – Idaho Falls Conference Room 240 150 Shoup Ave. Idaho Falls, ID 83402</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 Division of Behavioral Health (DBH) is currently working on building a peer recovery system and one issue that has come up as a barrier in Idaho is the requirement around criminal history and background checks. The current requirement does not work for the services that are being provided nor does it fit the model of recovery services that is being promoted. DBH has received complaints from SUD service providers regarding the current rule as it negatively impacts their workforce and ability to provide treatment services.

DBH has negotiated with providers and other interested parties to develop a criminal history and background check rule that both protects the client and acknowledges those who have been successful in their recovery by allowing them to work in the treatment field. The text of these proposed rule changes provides an administrative review on a case-by-case basis for individuals who do not receive a criminal history clearance to request a waiver. These rules provide for this waiver to help establish a peer recovery system for providers of alcohol and substance use disorders 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 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 due to 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 April 3, 2013, Idaho Administrative Bulletin, [Vol. 13-4, pages 15 and 16](#), under Docket No. 16-0720-1301.

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 Treena Clark at (208) 364-6611.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 25, 2013.

DATED this 1st day of August, 2013.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0717-1301

009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

01. Compliance With Department Criminal History and Background Check. All ~~current Department owners, operators,~~ employees, ~~applicants,~~ transfers, reinstated former employees, student interns, ~~contractors, and employees,~~ volunteers, ~~and others assigned to programs that involve~~ who provide direct contact with children or vulnerable adults as described in Section 39-5302, Idaho Code, care or services, or whose position requires regular contact with clients, must comply with the provisions in IDAPA 16.05.06, "Criminal History and Background Checks." (5-8-09)()

02. Availability to Work or Provide Service. ~~Certain individuals are allowed to provide services after the self-declaration is completed as provided in Section 56-1004A, Idaho Code, except when they have disclosed a designated crime listed in IDAPA 16.05.06, "Criminal History and Background Checks." The criminal history check requirements applicable to each provider type are found in the rules that state the qualifications or certification of those providers. An individual listed in Subsection 009.01 of these rules is available to work on a provisional basis at the discretion of the employer or agency once the individual has submitted his criminal history and background check application, it has been signed and notarized, reviewed by the employer or agency, and no disqualifying crimes or relevant records are disclosed on the application. An individual must be fingerprinted within twenty-one (21) days of submitting his criminal history and background check application.~~ (5-8-09)()

a. An individual is allowed to work or have access to clients only under supervision until the criminal history and background check is completed. ()

b. An individual, who does not receive a criminal history and background check clearance or a waiver granted under the provisions in this chapter, may not provide direct care or services, or serve in a position that requires regular contact with clients in an alcohol and substance use disorders treatment and recovery support services program. ()

03. Waiver of Criminal History and Background Check Denial. An individual who receives a conditional or unconditional denial for a criminal history and background check, may apply for a waiver to provide direct care or services, or serve in a position that requires regular contact with clients in an alcohol and substance use disorders treatment and recovery support services program. A waiver may be granted on a case-by-case basis upon administrative review by the Department of any underlying facts and circumstances in each individual case. A waiver will not be granted for crimes listed in Subsection 009.04 of this rule. ()

04. No Waiver for Certain Designated Crimes. No waiver will be granted by the Department for any of the following designated crimes or substantially conforming foreign criminal violations: ()

a. Forcible sexual penetration by use of a foreign object, as defined in Section 18-6608, Idaho Code; ()

b. Incest, as defined in Section 18-6602, Idaho Code; ()

c. Lewd conduct with a minor, as defined in Section 18-1508, Idaho Code; ()

d. Murder in any degree or assault with intent to commit murder, as defined in Sections 18-4001, 18-4003, and 18-4015, Idaho Code; ()

e. Possession of sexually exploitative material, as defined in Section 18-1507A, Idaho Code; ()

f. Rape, as defined in Section 18-6101, Idaho Code; ()

g. Sale or barter of a child, as defined in Section 18-1511, Idaho Code; ()

h. Sexual abuse or exploitation of a child, as defined in Sections 18-1506 and 18-1507, Idaho Code; ()

- i.** Enticing of children, as defined in Sections 18-1509 and 18-1509A, Idaho Code: ()
- j.** Inducing individuals under eighteen (18) years of age into prostitution or patronizing a prostitute, as defined in Sections 18-5609 and 18-5611, Idaho Code: ()
- k.** Any felony punishable by death or life imprisonment; or ()
- l.** Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-205, 18-306, 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying designated crimes. ()
- 05. Administrative Review.** An administrative review for a waiver may consist of a review of documents and supplemental information provided by the individual, a telephone interview, an in-person interview, or any other review deemed necessary by the Department. The Department may appoint a subcommittee to conduct administrative reviews provided for under Subsections 009.03 through 009.12 of this rule. ()
- 06. Written Request for Administrative Review and Waiver.** A written request for a waiver must be sent to the Administrative Procedures Section, 450 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0026 within fourteen (14) calendar days from the date of the issuance of a denial from the Department's Criminal History Unit. The fourteen (14) day period for submitting a request for a waiver may be extended by the Department for good cause. ()
- 07. Scheduling of Administrative Review.** Upon receipt of a written request for a waiver, the Department will determine the type of administrative review to be held, and conduct the review within thirty (30) business days from the date of receipt. When an in-person review is appropriate, the Department will provide the individual at least seven (7) days notice of the review date. ()
- 08. Factors Considered During Administrative Review.** During the administrative review, the following factors may be considered: ()
- a.** The severity or nature of the crimes or other findings; ()
- b.** The period of time since the incidents occurred; ()
- c.** The number and pattern of incidents being reviewed; ()
- d.** Circumstances surrounding the incidents that would help determine the risk of repetition; ()
- e.** The relationship between the incidents and the position sought; ()
- f.** Activities since the incidents, such as continuous employment, education, participation in treatment, completion of a problem-solving court or other formal offender rehabilitation, payment of restitution, or any other factors that may be evidence of rehabilitation. ()
- g.** A pardon that was granted by the Governor or the President; ()
- h.** The falsification or omission of information on the self-declaration form and other supplemental forms submitted; and ()
- i.** Any other factor deemed relevant to the review. ()
- 09. Administrative Review Decision.** A notice of decision will be issued by the Department within fifteen (15) business days of completion of the administrative review. ()
- 10. Decision to Grant Waiver.** The Department's decision to grant a waiver does not set a precedent for subsequent requests by an individual for a waiver. A waiver granted under this chapter is not a criminal history and background check clearance, and is only applicable to services and programs governed under this chapter. It does not apply to other Department programs requiring clearance of a criminal history and background check. ()

11. **Revocation of Waiver.** The Department may chose to revoke a waiver at its discretion for circumstances that it identifies as a risk to client health and safety, at any time. ()

12. **Waiver Decisions Are Not Subject to Review or Appeal.** The decision or actions of the Department concerning a waiver is not subject to review or appeal, administratively or otherwise. ()

13. **Employer Responsibilities.** A waiver granted by the Department is not a determination of suitability for employment. The employer is responsible for reviewing the results of a criminal history and background check even when a clearance is issued or a waiver is granted. Making a determination as to the ability or risk of the individual to provide direct care services or to serve in a position that requires regular contact with children and vulnerable adults is the responsibility of the employer. ()

010. DEFINITIONS - A THROUGH F.

For the purposes of these rules, the following terms are used as defined below: (5-8-09)

01. Adolescent. An individual between the ages of fourteen (14) and eighteen (18). (5-8-09)

02. Adult. An individual eighteen (18) years or older. (5-8-09)

03. Applicant. An adult or adolescent individual who is seeking alcohol or substance use disorders services through the Department who has completed or had completed on his behalf an application for alcohol or substance use disorder services. (5-8-09)

04. ASAM PPC-2R. Refers to the second edition, revised, manual of the patient placement criteria for the treatment of substance-related disorders, published by the American Society of Addiction Medicine. (5-8-09)

05. Assessment and Referral Services. A substance use disorders program provides these services in order to treat, provide services, or refer individuals. An assessment is designed to gather and analyze information regarding a client's current substance use disorder behavioral, social, medical, and treatment history. The purpose of the assessment is to provide sufficient information for problem identification and, if appropriate, substance use disorder related treatment or referral. (7-1-13)

06. Child. An individual under the age of fourteen (14) years. (7-1-13)

07. Client. A person receiving treatment for an alcohol or substance use disorder. The term "client" is synonymous with the terms: patient, resident, consumer, or recipient of treatment. (5-8-09)

08. Clinical Judgment. Refers to observations and perceptions based upon education, experience, and clinical assessment. This may include psychometric, behavioral, and clinical interview assessments that are structured, integrated, and then used to reach decisions, individually or collectively, about an individual's functional, mental, and behavioral attributes and alcohol and substance use disorders service needs. (5-8-09)

09. Clinical Necessity. Alcohol or substance use disorder services are deemed clinically necessary when the Department, in the exercise of clinical judgment, would recommend services to an applicant for the purpose of evaluating, diagnosing, or treating alcohol or substance use disorders that are: (5-8-09)

a. Clinically appropriate, in terms of type, frequency, extent, site and duration, and considered effective for treating the applicant's alcohol or substance use disorder; and (5-8-09)

b. Not primarily for the convenience of the applicant or service provider and not more costly than an alternative service or sequence of services and at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of the applicant's alcohol or substance use disorder. (5-8-09)

10. Clinical Team. A proposed client's clinical team may include: qualified clinicians, behavioral health professionals, professionals other than behavioral health professionals, behavioral health technicians and any other individual deemed appropriate and necessary to ensure that the assessment and subsequent treatment is

comprehensive and meets the needs of the proposed client. (5-8-09)

11. Clinically Managed Low-Intensity Residential Treatment. Is a program that offers at least five (5) hours per week of outpatient or intensive outpatient treatment services along with a structured recovery environment, staffed twenty-four (24) hours per day, which provides sufficient stability to prevent or minimize relapse or continued use. This level of care is also known as a Halfway House. (5-8-09)

12. Clinically Managed Medium-Intensity Residential Treatment. Frequently referred to as residential care, programs provide a structured, twenty-four (24) hour intensive residential program for clients who require treatment services in a highly structured setting. This type of program is appropriate for clients who need concentrated, therapeutic services prior to community residence. Community reintegration of residents in this level of care requires case management activities directed toward networking clients into community-based recovery support services such as housing, vocational services or transportation assistance so that the client is able to attend mutual/self-help meetings or vocational activities after discharge. (5-8-09)

13. Comprehensive Assessment. Those procedures by which a substance use disorder clinician evaluates an individual's strengths, weaknesses, problems, needs, and determines priorities so that a service plan can be developed. (7-1-13)

14. Contracted Intermediary. A third party contractor of the Department who handles direct contracting with network providers for treatment services to include network management, claims payment, data gathering per Federal and State requirements and census management. (5-8-09)

15. Department. The Department of Health and Welfare or a person authorized to act on behalf of the Department. (5-8-09)

16. Early Intervention Services. Services that are designed to explore and address problems or risk factors that appear to be related to substance use. (7-1-13)

17. Emergency. An emergency exists if an adult or adolescent individual is gravely disabled due to mental illness or substance abuse or dependence or there is a substantial risk that physical harm will be inflicted by the proposed client: (5-8-09)

a. Upon his own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on himself; or (5-8-09)

b. Upon another person as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm. (5-8-09)

18. Federal Poverty Guidelines. Guidelines issued annually by the Federal Department of Health and Human Services establishing the poverty income limits. The federal poverty guidelines for the current year may be found at: <http://aspe.hhs.gov/poverty/>. (5-8-09)

011. DEFINITIONS - G THROUGH Z.
For the purposes of these rules, the following terms are used as defined below: ()

01. Good Cause. A valid and sufficient reason for not complying with the time frame set for submitting a written request for a waiver by an individual who does not receive a criminal history and background check clearance. ()

02. Gravely Disabled. An adult or adolescent who, as a result of mental illness or substance abuse or dependence, is in danger of serious physical harm due to the person's inability to provide for any of his basic needs for nourishment, or essential medical care, or shelter or safety. (5-8-09)

03. Individualized Service Plan. A written action plan based on an intake eligibility screening and full clinical assessment, that identifies the applicant's clinical needs, the strategy for providing services to meet those needs, treatment goals and objectives and the criteria for terminating the specified interventions. (7-1-13)

2404. Intake Eligibility Screening. The collection of data, analysis, and review, which the Department, or its designee, uses to screen and determine whether an applicant is eligible for adult or adolescent alcohol or substance use disorder services available through the Department. (5-8-09)

2205. Intensive Outpatient Services. An organized service delivered by addiction professionals or addiction-credentialed clinicians, which provides a planned regimen of treatment consisting of regularly scheduled sessions within a structured program, for a minimum of nine (9) hours of treatment per week for adults and six (6) hours of treatment per week for adolescents. (5-8-09)

2306. Medically Monitored Detoxification. Means medically supervised twenty-four (24) hour care for patients who require hospitalization for treatment of acute alcohol intoxication or withdrawal, from one (1) or more other substances of abuse, and other medical conditions which together warrant treatment in this type of setting. Length of stay varies depending on the severity of the disease and withdrawal symptoms. (7-1-13)

2407. Medically Monitored Inpatient Treatment. Medically supervised twenty-four (24) hour care for patients requiring hospitalization and treatment services. Medically monitored inpatient treatment provides treatment services and access to full range of services offered by the hospital. (7-1-13)

2508. Network Treatment Provider. A treatment provider who has facility approval through the Department and is contracted with the Department's Management Service Contractor. A list of network providers can be found at the Department's website given in Section 005 of these rules. The list is also available by calling these telephone numbers: 1 (800) 922-3406; or dialing 211. (5-8-09)

2609. Opioid Replacement Outpatient Services. This service is specifically offered to a client who has opioids as his substance use disorder. Services are offered under the guidelines of a federally accredited program. (7-1-13)

2710. Outpatient Services. An organized non-residential service, delivered in a variety of settings, in which addiction treatment personnel provide professionally directed evaluation and treatment for alcohol and substance use disorders. (5-8-09)

2811. Priority Population. Priority populations are populations who receive services ahead of other persons and are determined yearly by the Department based on federal regulations. A current list of the priority population is available from the Department. (7-1-13)

2912. Recovery Support Services. These services include: safe and sober housing that is staffed; transportation; child care; family education; life skills education; marriage education; drug testing; peer to peer mentoring; and case management. (5-8-09)

3013. Residential Social Detoxification. Means a medically supported twenty-four (24) hour, social rehabilitation residential program which provides physical care, education, and counseling as appropriate for the client's health and safety during his process of physical withdrawal from acute alcohol intoxication or withdrawal, or from one or more other substances of abuse. Social detoxification provides access into care and treatment of alcohol or substance use disorders through monitored withdrawal, evaluation of present or potential alcohol or substance dependency and other physical ailments, and intervention into the progression of the disease through timely utilization of resources. Length of stay in a social detoxification program varies from three (3) to seven (7) days depending on the severity of the disease and withdrawal symptoms. (5-8-09)

314. Sliding Fee Scale. A scale used to determine an individual's cost for services based on Federal Poverty Guidelines and found in IDAPA 16.07.01, "Behavioral Health Sliding Fee Schedules." (5-8-09)

3215. Substance Dependence. Substance dependence is marked by a cluster of cognitive, behavioral, and physiological symptoms indicating that the individual continues to use alcohol or other drugs despite significant related problems. The cluster of symptoms can include: tolerance; withdrawal or use of a substance in larger amounts or over a longer period of time than intended; persistent desire or unsuccessful efforts to cut down or control substance use; a great deal of time spent in activities related to obtaining or using substances or to recover from their

effects; relinquishing important social, occupational or recreational activities because of substance use; and continuing alcohol or drug use despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been cause or exacerbated by such use as defined in the DSM-IV-TR. (5-8-09)

3316. Substance-Related Disorders. Substance-related disorders include disorders related to the taking of alcohol or another drug of abuse, to the side effects of a medication and to toxin exposures. They are divided into two (2) groups: the Substance Use Disorders and the Substance-Induced Disorders as defined in the DSM-IV-TR. (5-8-09)

3417. Substance Use Disorder. Includes Substance Dependence and Substance Abuse, according to the DSM-IV-TR. Substance Use Disorders are one (1) of two (2) subgroups of the broader diagnostic category of Substance-Related Disorders. (5-8-09)

3518. Substantial Material Change in Circumstances. A substantial and material change in circumstances which renders the Department's decision denying alcohol and substance use disorders services arbitrary and capricious. (5-8-09)

0142. -- 099. (RESERVED)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

**16.07.20 - ALCOHOL AND SUBSTANCE USE DISORDERS TREATMENT AND RECOVERY
SUPPORT SERVICES FACILITIES AND PROGRAMS**

DOCKET NO. 16-0720-1301

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 39-4605, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearings concerning this rulemaking will be held as follows:

ORIGINATING LOCATION -- LIVE MEETING

Tuesday, September 10, 2013

12:30 - 2:30 pm (PDT) -- 1:30 - 3:30 pm (MDT)

**Idaho Department of Health and Welfare, Central Office
Conference Room 3A (3rd floor)
450 West State Street
Boise, ID 83702**

VIDEOCONFERENCE LOCATIONS

Region I Office – Coeur d’Alene Main Conference Room 2195 Ironwood Court Coeur d’Alene, ID 83814	Region II Office – Lewiston 1st Floor Conference Rm. 1118 ‘F’ Street Lewiston, ID 83501
Region III Office – Caldwell Owyhee Conference Room (Rm. 226) 3402 Franklin Road Caldwell, ID 83605	Region IV Office – Boise Room 142 1720 Westgate Drive, Suite A Boise, ID 83704
Region V Office – Twin Falls Room 116 823 Harrison Twin Falls, ID 83301	Region VI Office – Pocatello Room 225 421 Memorial Drive Pocatello, ID 83201
Region VII Office – Idaho Falls Conference Room 240 150 Shoup Ave. Idaho Falls, ID 83402	

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

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

The Division of Behavioral Health (DBH) is currently working on building a peer recovery system and one issue that has come up as a barrier in Idaho is the requirement around criminal history and background checks. The current requirement does not work for the services that are being provided nor does it fit the model of recovery services that is being promoted. DBH has received complaints from SUD treatment providers regarding the current rule as it negatively impacts their workforce and ability to provide treatment services.

DBH has negotiated with providers and other interested parties to develop a criminal history and background check rule that both protects the client and acknowledges those who have been successful in their recovery by allowing them to work in the treatment field. The text of these proposed rule changes provides an administrative review on a case-by-case basis for individuals who do not receive a criminal history clearance to request a waiver. These rules provide for this waiver to help establish a peer recovery system for providers of alcohol and substance use disorders treatment and recovery programs.

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 due to 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 April 3, 2013, Idaho Administrative Bulletin, [Vol. 13-4, pages 15 and 16](#).

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 Treena Clark at (208) 364-6611.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 25, 2013.

DATED this 1st day of August, 2013.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0720-1301

009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

01. Criminal History and Background Check. All owners, operators, employees, transfers, reinstated former employees, student interns, contractors and volunteers hired or contracted with after May 1, 2010, who provide direct care or services, or have direct whose position requires regular contact with clients access, must comply with the provisions of IDAPA 16.05.06, “Criminal History and Background Checks.” (5-1-10)()

02. Availability to Work. An individual listed in Subsection 009.01 of these rules is available to work on a provisional basis at the discretion of the employer or agency once the individual has submitted his criminal history and background check application, it has been signed and notarized, reviewed by the employer or agency, and no disqualifying crimes or relevant records are disclosed on the application. An individual must be fingerprinted within twenty-one (21) days of submitting his criminal history and background check application. ()

a. An individual is allowed to work or have access to clients only under supervision until the criminal history and background check is completed. (5-1-10)()

b. An individual, who does not receive a criminal history and background check clearance or a waiver granted under the provisions in this chapter, may not provide direct care or services, or serve in a position that requires regular contact with clients in an alcohol and substance use disorders treatment and recovery support services program. ()

03. Waiver of Criminal History and Background Check Denial. An individual who receives a conditional or unconditional denial for a criminal history and background check, may apply for a waiver to provide direct care or services, or serve in a position that requires regular contact with clients in an alcohol and substance use disorders treatment and recovery support services program. A waiver may be granted on a case-by-case basis upon administrative review by the Department of any underlying facts and circumstances in each individual case. A waiver will not be granted for crimes listed in Subsection 009.04 of this rule. ()

04. No Waiver for Certain Designated Crimes. No waiver will be granted by the Department for any of the following designated crimes or substantially conforming foreign criminal violations: ()

- a.** Forcible sexual penetration by use of a foreign object, as defined in Section 18-6608, Idaho Code; ()
- b.** Incest, as defined in Section 18-6602, Idaho Code; ()
- c.** Lewd conduct with a minor, as defined in Section 18-1508, Idaho Code; ()
- d.** Murder in any degree or assault with intent to commit murder, as defined in Sections 18-4001, 18-4003, and 18-4015, Idaho Code; ()
- e.** Possession of sexually exploitative material, as defined in Section 18-1507A, Idaho Code; ()
- f.** Rape, as defined in Section 18-6101, Idaho Code; ()
- g.** Sale or barter of a child, as defined in Section 18-1511, Idaho Code; ()
- h.** Sexual abuse or exploitation of a child, as defined in Sections 18-1506 and 18-1507, Idaho Code; ()
- i.** Enticing of children, as defined in Sections 18-1509 and 18-1509A, Idaho Code; ()
- j.** Inducing individuals under eighteen (18) years of age into prostitution or patronizing a prostitute, as defined in Sections 18-5609 and 18-5611, Idaho Code; ()

- k.** Any felony punishable by death or life imprisonment; or ()
- l.** Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-205, 18-306, 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying designated crimes. ()
- 05.** **Administrative Review.** An administrative review for a waiver may consist of a review of documents and supplemental information provided by the individual, a telephone interview, an in-person interview, or any other review deemed necessary by the Department. The Department may appoint a subcommittee to conduct administrative reviews provided for under Subsections 009.03 through 009.12 of this rule. ()
- 06.** **Written Request for Administrative Review and Waiver.** A written request for a waiver must be sent to the Administrative Procedures Section, 450 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0026 within fourteen (14) calendar days from the date of the issuance of a denial from the Department's Criminal History Unit. The fourteen (14) day period for submitting a request for a waiver may be extended by the Department for good cause. ()
- 07.** **Scheduling of Administrative Review.** Upon receipt of a written request for a waiver, the Department will determine the type of administrative review to be held, and conduct the review within thirty (30) business days from the date of receipt. When an in-person review is appropriate, the Department will provide the individual at least seven (7) days notice of the review date. ()
- 08.** **Factors Considered During Administrative Review.** During the administrative review, the following factors may be considered: ()
- a.** The severity or nature of the crimes or other findings; ()
- b.** The period of time since the incidents occurred; ()
- c.** The number and pattern of incidents being reviewed; ()
- d.** Circumstances surrounding the incidents that would help determine the risk of repetition; ()
- e.** The relationship between the incidents and the position sought; ()
- f.** Activities since the incidents, such as continuous employment, education, participation in treatment, completion of a problem-solving court or other formal offender rehabilitation, payment of restitution, or any other factors that may be evidence of rehabilitation. ()
- g.** A pardon that was granted by the Governor or the President; ()
- h.** The falsification or omission of information on the self-declaration form and other supplemental forms submitted; and ()
- i.** Any other factor deemed relevant to the review. ()
- 09.** **Administrative Review Decision.** A notice of decision will be issued by the Department within fifteen (15) business days of completion of the administrative review. ()
- 10.** **Decision to Grant Waiver.** The Department's decision to grant a waiver does not set a precedent for subsequent requests by an individual for a waiver. A waiver granted under this chapter is not a criminal history and background check clearance, and is only applicable to services and programs governed under this chapter. It does not apply to other Department programs requiring clearance of a criminal history and background check. ()
- 11.** **Revocation of Waiver.** The Department may chose to revoke a waiver at its discretion for circumstances that it identifies as a risk to client health and safety, at any time. ()
- 12.** **Waiver Decisions Are Not Subject to Review or Appeal.** The decision or actions of the

Department concerning a waiver is not subject to review or appeal, administratively or otherwise. ()

13. Employer Responsibilities. A waiver granted by the Department is not a determination of suitability for employment. The employer is responsible for reviewing the results of a criminal history and background check even when a clearance is issued or a waiver is granted. Making a determination as to the ability or risk of the individual to provide direct care services or to serve in a position that requires regular contact with children and vulnerable adults is the responsibility of the employer. ()

(BREAK IN CONTINUITY OF SECTIONS)

011. DEFINITIONS - D THROUGH H.

For the purposes of these rules, the following terms are used. (5-1-10)

01. Department. The Idaho Department of Health and Welfare. (5-1-10)

02. Detoxification Services. Services necessary to monitor individuals who are undergoing the systematic reduction of a toxic agent from the body during withdrawal. (5-1-10)

~~03. Direct Client Access. Direct client access means an employee, contractor, or volunteer who has accessibility to a client.~~ (5-1-10)

043. Director. The Director of the Department of Health and Welfare or his designee. (5-1-10)

054. Discharge. The point at which the client's active involvement in treatment or recovery support services is terminated and the program no longer maintains active responsibility for the care of the client. (5-1-10)

065. Discharge Summary. A document written by the client's provider upon discharge from treatment and contains a summary of the following: (5-1-10)

a. Client status at discharge; (5-1-10)

b. Treatment progress; (5-1-10)

c. Summaries of services to be provided after discharge; and (7-1-13)

d. Referrals for further treatment. (5-1-10)

076. Early Intervention Services. Services that are designed to explore and address problems or risk factors that appear to be related to substance use. (7-1-13)

087. Education. Strategies that teach people critical information about alcohol and other drugs and the physical, emotional, and social consequences of their use. (5-1-10)

098. Executive Director. The individual who is responsible for the overall management of the program or facility. The executive director is appointed by the governing body to act on its behalf. The term "executive director" is synonymous with the terms "administrator," "director," "superintendent," "president," "vice-president," and "executive vice-president." (5-1-10)

~~109. Facility/location.~~ The individual building or buildings, including furnishings and fixtures, or locations where persons with alcohol or substance use disorders receive services. The term "facility" is synonymous with office, clinic, or physical plant. (5-1-10)

10. Good Cause. A valid and sufficient reason for not complying with the time frame set for submitting a written request for a waiver by an individual who does not receive a criminal history and background

check clearance. ()

11. Governing Body. The individual or individuals, board of directors, group, or agency that has ultimate authority and responsibility for the overall operation of an alcohol and substance use disorders treatment or recovery support services facility or program and for full compliance with these rules and minimum standards. (5-1-10)

12. Group Counseling. The application of formal counseling techniques involving interaction among members of a group of clients. (5-1-10)

13. Guardian. (5-1-10)

a. Under Title 15, Chapter 5, Part 2, Idaho Code, an individual who has been appointed by a court of law to have and exercise the powers and responsibilities of a parent who has not been deprived of custody of his minor and unemancipated child; (5-1-10)

b. Under Title 66, Chapter 3 and 4, Idaho Code, an individual who has been appointed by a court of law to have and exercise the powers and responsibilities of a guardian for a person who is mentally ill or with a developmental disability; or (5-1-10)

c. Under Title 15, Chapter 5, Part 3, Idaho Code, an individual who has been appointed by a court of law to assist any incapacitated person to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person. (5-1-10)

(BREAK IN CONTINUITY OF SECTIONS)

138. JOINT COMMISSION OR CARF ACCREDITATION.

The Department may approve programs or renew a program's certificate of approval based upon Joint Commission or CARF accreditation under the following conditions: (5-1-10)()

01. Organization Chart Verifying Staffing Credentials. Organization chart with verification that staff meet minimum credential or certification standards: (5-1-10)()

02. Criminal History and Background Checks. Satisfactory evidence that the owner, applicant, person proposed as executive director, ~~and all~~ employees, transfers, reinstated former employees, student interns, contractors, and volunteers, ~~and any other persons hired or contracted with after May 1, 2010~~, who provide direct care or services, or have access to whose position requires regular contact with clients, have successfully passed received a criminal history and background check clearance, or have a waiver as described in Section 009 of these rules: (5-1-10)()

03. Tuberculosis Testing. The personnel policies and procedures must establish tuberculosis testing requirements. All staff members, volunteers, and trainees, must have upon employment, or engagement, and every three (3) years thereafter, a tuberculin skin test by the Mantoux method, or a blood test for tuberculosis infection. Staff members, volunteers, and trainees who are known to be a positive reactor may have a tuberculosis blood test or chest x-ray examination in lieu of a required tuberculin skin test. Personnel who have active tuberculosis must be restricted from employment and attendance at the facility until it is determined by a treating physician that the tuberculosis is non-infectious. Results of the testing must be documented in personnel record: and (7-1-13)()

04. Application Fee. Payment of non-refundable application or renewal fee as described in Sections 130 and 135 of these rules. (5-1-10)

(BREAK IN CONTINUITY OF SECTIONS)

210. PERSONNEL POLICIES AND PROCEDURES.

All alcohol and substance use disorders treatment or recovery support services programs must have and adhere to personnel policies and procedures that meet the following standards: (5-1-10)

01. Required Personnel Policies and Procedures. Personnel policies and procedures must be developed, adopted and maintained to promote the objectives of the program and provide for a sufficient number of qualified substance use disorders professionals, treatment and support staff to render the services of the program and provide quality care during all hours of operation. (5-1-10)

a. All personnel policies must be written, reviewed on an annual basis by the executive director and governing body, and signed and dated when reviewed or revised. (5-1-10)

b. The personnel policies must include procedures for recruiting, selecting, promoting and terminating staff. (5-1-10)

c. The personnel policies and procedures must apply to all employees, but may differ with respect to job classifications. (5-1-10)

d. The personnel policies and procedures must include information on the following: (5-1-10)

i. Employee benefits; (5-1-10)

ii. Recruitment and promotion; (5-1-10)

iii. Orientation; (5-1-10)

iv. Training and staff development; (5-1-10)

v. Employee grievances; (5-1-10)

vi. Safety and employee injuries; (5-1-10)

vii. Relationships with employee organizations; (5-1-10)

viii. Disciplinary systems; (5-1-10)

ix. Suspension and termination mechanisms; (5-1-10)

x. Wages, hours and salary administration; (5-1-10)

xi. Rules of conduct; (5-1-10)

xii. Lines of authority; and (5-1-10)

xiii. Performance appraisals and evaluation schedule. (5-1-10)

e. The personnel policies and procedures must include a mechanism for determining that all personnel are capable of performing assigned tasks. (5-1-10)

f. The personnel policies and procedures must ensure that personnel who have a communicable disease, infectious wound or other transmittable condition and who provide care or services to clients or have access to clients are required to implement protective infection control techniques in accordance with these rules. If protective infection control techniques are not implemented, personnel who have a communicable disease, infectious wound or other transmittable condition must not work until the infectious state is corrected and non-infectious; or be reassigned to other areas where contact with others is not expected and the likelihood of transmission of infection is absent; or seek other remedies that will avoid spreading the infection. (5-1-10)

- g.** The personnel policies and procedures must describe methods and procedures for supervising all personnel, including volunteers and students. (5-1-10)
- h.** The personnel policies and procedures must assure confidentiality of personnel records and specify who has access to personnel information. (5-1-10)
- i.** There must be documentation to verify that the policies and procedures are made available to and discussed with each employee at the time of hire and are made available to others upon request. (5-1-10)
- j.** A mechanism must be established for notifying employees of changes in the policies and procedures. (5-1-10)
- k.** The personnel policies and procedures must establish tuberculosis testing requirements for all staff members. Each employee must have upon employment, and every three (3) years thereafter, a tuberculin skin test by the Mantoux method, or tuberculosis blood test. An employee who is known to be a positive reactor may have a tuberculosis blood test or chest x-ray examination in lieu of a required tuberculin skin test. Personnel who have active tuberculosis must be restricted from employment and attendance at the facility until it is determined by a treating physician that the tuberculosis is non-infectious. Results of the testing must be documented in personnel record. (7-1-13)
- l.** The personnel policies and procedures must establish the requirement for CPR training and basic first aid training. A minimum of one (1) CPR and First Aid trained staff must be onsite during business hours. Staff responsible for client care must complete this training within ninety (90) days of employment. Additionally, the policies and procedures must establish the methods for renewal of CPR and first aid certification so that they remain current at all times. (5-1-10)
- m.** The personnel policies and procedures must establish the provision for criminal history background checks for all employees as described in Section 009 of these rules. (5-1-10)
- n.** The personnel policies and procedures must establish the provision of clinical supervision. (5-1-10)
- o.** Policy and procedures must be written that establish a drug free workplace. (5-1-10)
- 02. Hiring Practices.** Hiring practices must be specified in the written policies and procedures and must be consistent with the needs of the program and its services. (5-1-10)
- a.** The selection of personnel must be based on criteria that are demonstrably related to the job under consideration. (5-1-10)
- b.** Qualified substance use disorders professional staff must participate in determining what training, experience, and demonstrated competence will be required for assuming specific clinical service responsibility. (5-1-10)
- c.** There must be documentation to verify that qualified substance use disorders professionals meet all federal, state and local requirements for licensure, registration or certification. (5-1-10)
- 03. Equal Employment Opportunity.** No alcohol and substance use disorders treatment or recovery support services program approved under these rules will discriminate on the basis of race, creed, color, religion, age, gender, national origin, veteran, or disability, except in those instances where bona fide occupational qualifications exist. (5-1-10)
- 04. Responsible Staff Member to Implement Personnel Policies and Procedures.** The executive director must appoint a staff member to implement and coordinate personnel policies and procedures to accomplish the following tasks: (5-1-10)
- a.** Develop a written organizational plan for personnel services; (5-1-10)

- b. Maintain personnel records; (5-1-10)
 - c. Disseminate employment information to staff; (5-1-10)
 - d. Develop staff orientation programs; (5-1-10)
 - e. Implement procedures designed to assure compliance with federal, state and local laws related to employment practices; and (5-1-10)
 - f. Supervise the processing of employment-related forms. (5-1-10)
- 05. Contents of Personnel Record for Each Staff Member.** A personnel record must be kept on each staff member and must contain the following items: (5-1-10)
- a. Application for employment including a record of the employee's education or training and work experience. This may be supplemented by a resume; (5-1-10)
 - b. A written record of all findings from verbal contacts with references, and letters of recommendation; (5-1-10)
 - c. Verification of licensure, certification, registration or renewals; (5-1-10)
 - d. A signed and dated commitment to a code of ethics appropriate for alcohol and substance use disorders treatment staff; (5-1-10)
 - e. Number of hours per pay period, wage and salary information, including all adjustments; (5-1-10)
 - f. Performance appraisals or contract compliance evaluation; (7-1-13)
 - g. Counseling actions; (5-1-10)
 - h. Disciplinary actions; (5-1-10)
 - i. Commendations; (5-1-10)
 - j. Employee incident reports; (5-1-10)
 - k. A Verification of a Department criminal history and background check clearance, or a waiver issued by the Department as described in Section 009 of these rules; ~~(5-1-10)~~ ()
 - l. Results of tuberculosis testing, treatment taken, including dates of treatment, for tuberculosis infection; (7-1-13)
 - m. Verification of employee and emergency orientation procedures; and (5-1-10)
 - n. Verification of current cardiopulmonary resuscitation (CPR) training and basic first aid training, in accordance with the requirements under Subsection 01.l. of this rule and under Subsections 392.03, 520.03.d., and 520.04. For employees in direct care at Residential Social Detoxification Settings, verification of additional training specific to detoxification prior to being charged with the responsibility of client care. (7-1-13)
- 06. Job Description for a Position in the Program.** For each position in the program, there must be a written job description that specifies the duties and responsibilities of the position and the minimum level of education, training or related work experience required or needed to fulfill it. (5-1-10)
- a. Each job description must specify the following: (5-1-10)

- i. The position title; (5-1-10)
- ii. The program, department, service, or unit; (5-1-10)
- iii. Direct supervisor's title; (5-1-10)
- iv. Positions supervised, if any; (5-1-10)
- v. Clear descriptions of job functions; and (5-1-10)
- vi. Clinical, administrative, and procedural responsibility and authority. (5-1-10)
- b.** Each job description must accurately reflect the job and must be revised whenever a change in qualifications, duties, supervision, or any other major job-related factor is made. (5-1-10)
- c.** Each job description must be comprehensive enough to enable a new employee to understand the position, job functions, responsibility, chain-of-command, and authority. (5-1-10)
- d.** Each job description must be sufficiently detailed to serve as a basis for performance appraisals. (5-1-10)
- 07. Performance Appraisals.** Performance appraisals must be conducted and must be related to the job description and job performance. (5-1-10)
 - a.** The criteria used to evaluate job performance must be measurable and relate to the skills, knowledge and attitudes that the job requires. (5-1-10)
 - b.** Performance appraisals must be conducted, at a minimum, annually. (5-1-10)
 - c.** Performance appraisals must be in writing. (5-1-10)
 - d.** There must be documentation to verify that the employee has reviewed the evaluation and has had an opportunity to comment on it. The employee must sign the appraisal after review and comments are completed. (5-1-10)
 - e.** The program must develop policies and procedures to follow when there is a serious discrepancy between the staff member's actual job performance and the criteria for an acceptable level of job performance. (5-1-10)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.07.33 - ADULT MENTAL HEALTH SERVICES

DOCKET NO. 16-0733-1301

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 39-4605, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearings concerning this rulemaking will be held as follows:

ORIGINATING LOCATION -- LIVE MEETING

Tuesday, September 10, 2013

12:30 - 2:30 pm (PDT) -- 1:30 - 3:30 pm (MDT)

**Idaho Department of Health and Welfare, Central Office
Conference Room 3A (3rd floor)
450 West State Street
Boise, ID 83702**

VIDEOCONFERENCE LOCATIONS

Region I Office – Coeur d’Alene Main Conference Room 2195 Ironwood Court Coeur d’Alene, ID 83814	Region II Office – Lewiston 1st Floor Conference Rm. 1118 “F” Street Lewiston, ID 83501
Region III Office – Caldwell Owyhee Conference Room (Rm. 226) 3402 Franklin Road Caldwell, ID 83605	Region IV Office – Boise Room 142 1720 Westgate Drive, Suite A Boise, ID 83704
Region V Office – Twin Falls Room 116 823 Harrison Twin Falls, ID 83301	Region VI Office – Pocatello Room 225 421 Memorial Drive Pocatello, ID 83201
Region VII Office – Idaho Falls Conference Room 240 150 Shoup Ave. Idaho Falls, ID 83402	

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

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

The Division of Behavioral Health (DBH) is currently working on building a peer delivery system and one issue that has come up as a barrier in Idaho is the requirement around criminal history and background checks. The current requirement does not work for the services that are being provided nor does it fit the model of services that is being promoted. DBH has received complaints from mental health service providers regarding the current rule as it negatively impacts their workforce and ability to provide mental health services.

DBH has negotiated with providers and other interested parties to develop a criminal history and background check rule that both protects the client and acknowledges those who have been successful in their recovery by allowing them to work in the mental health field. The text of these proposed rule changes provides an administrative review on a case-by-case basis for individuals who do not receive a criminal history clearance to request a waiver. These rules provide for this waiver to help establish a peer delivery system for providers of adult mental health services.

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 due to 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 April 3, 2013, Idaho Administrative Bulletin, [Vol. 13-4, pages 15 and 16](#), under Docket No. 16-0720-1301.

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 Treena Clark at (208) 364-6611.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 25, 2013.

DATED this 1st day of August, 2013.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0733-1301

009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

01. Compliance With Department Criminal History and Background Check. All ~~current Department owners, operators,~~ employees, ~~applicants,~~ transfers, reinstated former employees, student interns, ~~contractors, and employees,~~ volunteers, ~~and others assigned to programs that involve~~ who provide direct ~~contact with children or vulnerable adults as described in Section 39-5302, Idaho Code,~~ care or services, or whose position requires regular contact with clients, must comply with the provisions in IDAPA 16.05.06, "Criminal History and Background Checks." (5-8-09)()

02. Availability to Work or Provide Service. ~~Certain individuals are allowed to provide services after the self-declaration is completed as provided in Section 56-1004A, Idaho Code, except when they have disclosed a designated crime listed in IDAPA 16.05.06, "Criminal History and Background Checks." The criminal history check requirements applicable to each provider type are found in the rules that state the qualifications or certification of those providers. An individual listed in Subsection 009.01 of these rules is available to work on a provisional basis at the discretion of the employer or agency once the individual has submitted his criminal history and background check application, it has been signed and notarized, reviewed by the employer or agency, and no disqualifying crimes or relevant records are disclosed on the application. An individual must be fingerprinted within twenty-one (21) days of submitting his criminal history and background check application.~~ (5-8-09)()

a. An individual is allowed to work or have access to clients only under supervision until the criminal history and background check is completed. ()

b. An individual, who does not receive a criminal history and background check clearance or a waiver granted under the provisions in this chapter, may not provide direct care or services, or serve in a position that requires regular contact with clients accessing adult mental health services through the Department. ()

03. Waiver of Criminal History and Background Check Denial. An individual who receives a conditional or unconditional denial for a criminal history and background check, may apply for a waiver to provide direct care or services, or serve in a position that requires regular contact with clients accessing adult mental health services through the Department. A waiver may be granted on a case-by-case basis upon administrative review by the Department of any underlying facts and circumstances in each individual case. A waiver will not be granted for crimes listed in Subsection 009.04 of this rule. ()

04. No Waiver for Certain Designated Crimes. No waiver will be granted by the Department for any of the following designated crimes or substantially conforming foreign criminal violations: ()

a. Forcible sexual penetration by use of a foreign object, as defined in Section 18-6608, Idaho Code; ()

b. Incest, as defined in Section 18-6602, Idaho Code; ()

c. Lewd conduct with a minor, as defined in Section 18-1508, Idaho Code; ()

d. Murder in any degree or assault with intent to commit murder, as defined in Sections 18-4001, 18-4003, and 18-4015, Idaho Code; ()

e. Possession of sexually exploitative material, as defined in Section 18-1507A, Idaho Code; ()

f. Rape, as defined in Section 18-6101, Idaho Code; ()

g. Sale or barter of a child, as defined in Section 18-1511, Idaho Code; ()

h. Sexual abuse or exploitation of a child, as defined in Sections 18-1506 and 18-1507, Idaho Code; ()

i. Enticing of children, as defined in Sections 18-1509 and 18-1509A, Idaho Code; ()

i. Inducing individuals under eighteen (18) years of age into prostitution or patronizing a prostitute, as defined in Sections 18-5609 and 18-5611, Idaho Code; ()

k. Any felony punishable by death or life imprisonment; or ()

l. Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-205, 18-306, 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying designated crimes. ()

05. Administrative Review. An administrative review for a waiver may consist of a review of documents and supplemental information provided by the individual, a telephone interview, an in-person interview, or any other review deemed necessary by the Department. The Department may appoint a subcommittee to conduct administrative reviews provided for under Subsections 009.03 through 009.12 of this rule. ()

06. Written Request for Administrative Review and Waiver. A written request for a waiver must be sent to the Administrative Procedures Section, 450 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0026 within fourteen (14) calendar days from the date of the issuance of a denial from the Department's Criminal History Unit. The fourteen (14) day period for submitting a request for a waiver may be extended by the Department for good cause. ()

07. Scheduling of Administrative Review. Upon receipt of a written request for a waiver, the Department will determine the type of administrative review to be held, and conduct the review within thirty (30) business days from the date of receipt. When an in-person review is appropriate, the Department will provide the individual at least seven (7) days notice of the review date. ()

08. Factors Considered During Administrative Review. During the administrative review, the following factors may be considered: ()

a. The severity or nature of the crimes or other findings; ()

b. The period of time since the incidents occurred; ()

c. The number and pattern of incidents being reviewed; ()

d. Circumstances surrounding the incidents that would help determine the risk of repetition; ()

e. The relationship between the incidents and the position sought; ()

f. Activities since the incidents, such as continuous employment, education, participation in treatment, completion of a problem-solving court or other formal offender rehabilitation, payment of restitution, or any other factors that may be evidence of rehabilitation. ()

g. A pardon that was granted by the Governor or the President; ()

h. The falsification or omission of information on the self-declaration form and other supplemental forms submitted; and ()

i. Any other factor deemed relevant to the review. ()

09. Administrative Review Decision. A notice of decision will be issued by the Department within fifteen (15) business days of completion of the administrative review. ()

10. Decision to Grant Waiver. The Department's decision to grant a waiver does not set a precedent for subsequent requests by an individual for a waiver. A waiver granted under this chapter is not a criminal history and background check clearance, and is only applicable to services and programs governed under this chapter. It does not apply to other Department programs requiring clearance of a criminal history and background check. ()

11. Revocation of Waiver. The Department may chose to revoke a waiver at its discretion for circumstances that it identifies as a risk to client health and safety, at any time. ()

12. Waiver Decisions Are Not Subject to Review or Appeal. The decision or actions of the Department concerning a waiver is not subject to review or appeal, administratively or otherwise. ()

13. Employer Responsibilities. A waiver granted by the Department is not a determination of suitability for employment. The employer is responsible for reviewing the results of a criminal history and background check even when a clearance is issued or a waiver is granted. Making a determination as to the ability or risk of the individual to provide direct care services or to serve in a position that requires regular contact with children and vulnerable adults is the responsibility of the employer. ()

010. DEFINITIONS.

For the purposes of these rules, the following terms are used as defined below: (5-8-09)

01. Adult. An individual eighteen (18) years of age or older. (5-8-09)

02. Adult Mental Health Services. Adult mental health services include psychiatric clinical services, case management, individual therapy, group therapy, psychosocial rehabilitation (PSR), assertive community treatment (ACT), patient assistance program (PAP), benefit assistance, co-occurring disorders treatment, and pharmacological education. Mental health services do not include educational or vocational services related to traditional academic subjects or vocational training, experimental procedures, habilitation, or any other services which are primarily recreational or diversional in nature. (5-8-09)

03. Applicant. An adult individual who is seeking mental health services through the Department who has completed, or had completed on his behalf, an application for mental health services. (5-8-09)

04. Client. A person receiving mental health services through the Department. The term "client" is synonymous with the following terms: patient, participant, resident, consumer, or recipient of treatment or services. (5-8-09)

05. Clinical Judgment. Refers to observations and perceptions based upon education, experience, and clinical assessment. This may include psychometric, behavioral, and clinical interview assessments that are structured, integrated, and then used to reach decisions, individually or collectively, about an individual's functional, mental, and behavioral attributes and mental health service needs. (5-8-09)

06. Clinical Necessity. Adult mental health services are deemed clinically necessary when the Department, in the exercise of clinical judgment, recommends services to an applicant for the purpose of evaluating, diagnosing, or treating a mental illness and that are: (5-8-09)

a. Clinically appropriate, in terms of type, frequency, extent, site, and duration, and considered effective for treating the applicant's mental illness; and (5-8-09)

b. Not primarily for the convenience of the applicant or service provider, not more costly than an alternative service or sequence of services, and at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of the applicant's mental illness. (5-8-09)

07. Clinical Team. A proposed client's clinical team may include: qualified clinicians, behavioral health professionals, professionals other than behavioral health professionals, behavioral health technicians, and any other individual deemed appropriate and necessary to ensure that the treatment is comprehensive and meets the needs of the proposed client. (5-8-09)

08. Department. The Idaho Department of Health and Welfare or its designee. The Department is designated as the State Mental Health Authority under Section 39-3124, Idaho Code. (5-8-09)

09. Emergency. An emergency exists if an adult individual is gravely disabled due to mental illness or there is a substantial risk that physical harm will be inflicted by the proposed client: (5-8-09)

a. Upon his own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on himself; or (5-8-09)

b. Upon another person, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm. (5-8-09)

10. Federal Poverty Guidelines. Guidelines issued annually by the Federal Department of Health and Human Services establishing the poverty income limits. The federal poverty guidelines for the current year may be found at: <http://aspe.hhs.gov/poverty/>. (5-8-09)

11. Functional Impairment. Difficulties that substantially impair or limit role functioning with an individual's basic daily living skills, or functioning in social, family, vocational, or educational contexts including psychiatric, health, medical, financial, and community or legal area, or both. (5-8-09)

12. Good Cause. A valid and sufficient reason for not complying with the time frame set for submitting a written request for a waiver by an individual who does not receive a criminal history and background check clearance. ()

123. Gravely Disabled. An adult who, as a result of mental illness, is in danger of serious physical harm due to the person's inability to provide for any of his basic needs for nourishment, essential medical care, shelter, or safety. (5-8-09)

134. Individualized Treatment Plan. A written action plan based on an intake eligibility assessment, that identifies the applicant's clinical needs, the strategy for providing services to meet those needs, treatment goals and objectives, and the criteria for terminating the specified interventions. (5-8-09)

145. Intake Eligibility Assessment. The collection of data, analysis, and review that the Department uses to screen and determine whether an applicant is eligible for mental health services available through the Department. (5-8-09)

156. Serious Mental Illness (SMI). Means any of the following psychiatric illnesses as defined by the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, Text Revision (DSM-IV-TR): (5-8-09)

- a. Schizophrenia; (5-8-09)
- b. Paranoia and other psychotic disorders; (5-8-09)
- c. Bipolar disorders (mixed, manic and depressive); (5-8-09)
- d. Major depressive disorders (single episode or recurrent); (5-8-09)
- e. Schizoaffective disorders; and (5-8-09)
- f. Obsessive-compulsive disorders. (5-8-09)

167. Serious and Persistent Mental Illness (SPMI). A primary diagnosis under DSM-IV-TR of Schizophrenia, Schizoaffective Disorder, Bipolar I Disorder, Bipolar II Disorder, Major Depressive Disorder Recurrent Severe, Delusional Disorder, or Psychotic Disorder Not Otherwise Specified (NOS) for a maximum of one hundred twenty (120) days without a conclusive diagnosis. The psychiatric disorder must be of sufficient severity to cause a substantial disturbance in role performance or coping skills in at least two (2) of the following functional areas in the last six (6) months: (5-8-09)

- a. Vocational or educational, or both. (5-8-09)
- b. Financial. (5-8-09)

- c. Social relationships or support, or both. (5-8-09)
 - d. Family. (5-8-09)
 - e. Basic daily living skills. (5-8-09)
 - f. Housing. (5-8-09)
 - g. Community or legal, or both. (5-8-09)
 - h. Health or medical, or both. (5-8-09)
- 178. Sliding Fee Scale.** A scale used to determine an individual's financial obligation for services based on Federal Poverty Guidelines and found in IDAPA 16.07.01, "Behavioral Health Sliding Fee Schedules." (5-8-09)
- 189. Substantial Material Change in Circumstances.** A substantial and material change in circumstances which renders the Department's decision denying mental health services arbitrary and capricious. (5-8-09)

IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE

18.01.04 - RULES PERTAINING TO BAIL AGENTS

DOCKET NO. 18-0104-1301

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, 41-211, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 18, 2013.

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

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

This rulemaking will delete Section 016 from Rule 18.01.04 to conform the rule to the interpretation of Section 41-1042, Idaho Code, consistent with the Idaho Supreme Court's holding in *Two Jinn v. Idaho Department of Insurance*, 154 Idaho 1, 293 P.3d 150 (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: 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 3, 2013, Idaho Administrative Bulletin, [Volume 13-7, page 64](#).

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Tom Donovan, at 208-334-4214, or tom.donovan@doi.idaho.gov or Dale Freeman at 208-334-4321, dale.freeman@doi.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 25, 2013.

DATED this 8th day of August, 2013.

Thomas A. Donovan
Deputy Director
Idaho Department of Insurance
700 W. State St – 3rd floor
Boise ID 83720
208-334-4214
208-334-4398 (fax)

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0104-1301

016. ~~ALLOWABLE BAIL AGENT CHARGES AND FEES. (RESERVED)~~

~~01. **Charges for Bail Transaction.** A bail agent shall not directly or indirectly impose or seek to impose any fees or charges except for those permitted under Section 41-1042, Idaho Code, as a part of any application, issuance, effectuation or continuation of a bail bond. (4-7-11)~~

~~02. **Charges for Additional Services.** Charges and fees outside the scope of Section 41-1042, Idaho Code, such as charges for returning a defendant to custody after a breach of the bail bond contract, must be negotiated separately after the bail bond has been effectuated. Negotiations for additional charges shall not be entered into as a part of the application, issuance and effectuation of a bail bond and shall not be a condition of or requirement for entering into or continuing a bail bond contract. Any fees or charges that are negotiated separately shall be reasonable in relation to the expenses or services for which the fee or charge is imposed and must be accompanied by a statement that clearly explains that any agreement to pay fees or charges is not a requirement or condition to the validity of the existing bail bond. (4-7-11)~~

~~03. **Collateral.** Except as provided in Section 017.03 of this rule, collateral accepted in connection with the bail bond transaction shall be used solely for reimbursement of penal amounts paid to the courts in the case of forfeiture of the bail bond. (4-7-11)~~

IDAPA 20 - DEPARTMENT OF LANDS

20.02.01 - RULES PERTAINING TO THE IDAHO FOREST PRACTICES ACT

DOCKET NO. 20-0201-1301

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 38-1304, Idaho Code.

MEETING SCHEDULE: Public hearings concerning this rulemaking will be held as follows:

Tuesday, September 10, 2013 1:00 p.m. Pacific Time	Thursday, September 19, 2013 1:00 p.m. Mountain Time
Idaho Department of Lands Sundance Conference Rooms 3284 West Industrial Loop Coeur d'Alene, Idaho	Idaho Department of Lands Garnet Conference Rooms 300 North 6th Street, Suite 103 Boise, Idaho

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

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

The Idaho Forest Practices Act Advisory Committee (FPAAC) is comprised of 9 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 streamside tree-retention rule (shade rule) that is based on Idaho forest riparian data. The proposed shade rule will allow forest landowners to select from two options that are meant to address both shade and large wood recruitment in streams. The proposed changes include:

1. Amendment of one (1) subparagraph (030.07.e.ii.) defining the new minimum standing tree requirements for both sides of all Class I and Class II streams in Idaho forestlands;
2. Insertion of one (1) new subparagraph (030.07.e.iii.) defining the new minimum standing tree requirements for both sides of all Class II streams in Idaho forestlands;
3. Removal of three (3) existing rule subparagraphs (030.07.e.vi., .07.e.vii., and 07.e.ix.), eliminating the current streamside-protection rule sections defining required tree retention in riparian, streamside areas; and
4. Insertion of two (2) subsections (010.24. and 010.48.) to define the forestry terms Forest Type and Relative Stocking, introduced in the new shade rule.

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 Sections 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 5, 2013 Idaho Administrative Bulletin, [Volume 13-6, pages 45 and 46](#). 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.

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 Craig Foss at (208) 769-1525 or cfoss@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 September 25th, 2013.

DATED this 2nd day of August, 2013.

Craig Foss
Chief, Bureau of Forestry Assistance
Idaho Department of Lands
PO Box 83720
Boise, Idaho 83720
(208) 769-1525/Fax (208) 769-1524
cfoss@idl.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 20-0201-01301

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. 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)
- 10. Commercial Products.** Saleable forest products of sufficient value to cover cost of harvest and transportation to available markets. (4-11-06)
- 11. 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)
- 12. 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)
- 13. 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)
- 14. Cull.** Nonmerchantable, alive, standing trees of greater height than twenty (20) feet. (1-24-78)
- 15. Department.** The Idaho Department of Lands. (10-14-75)
- 16. Deterioration Rate.** Rate of natural decomposition and compaction of fuel debris which decreases the hazard and varies by site. (1-24-78)
- 17. Director.** The Director of the Idaho Department of Lands or his designee. (10-14-75)
- 18. 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)
- 19. Fertilizers.** Any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment. (10-14-75)
- 20. 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)
- 21. 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)
- 22. 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)

23. 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 forest types in Idaho are defined as follows: ()

a. North Idaho grand fir/western red cedar (NIGF): moist to wet interior forests with western red cedar, western hemlock, and grand fir being primary climax species, found in forests north of the Clearwater/ and Lochsa Rivers. ()

b. Central Idaho grand fir/western red cedar (CIGF): productive conifer forests found in forests between the Lochsa River Basin and the Salmon River, characterized by stands having western red cedar and grand fir as climax species, with a mixed-conifer overstory increasingly comprised of ponderosa pine, Douglas-fir, and larch in the river breaks canyon-lands. Stocking levels are generally lower than that of the NIGF stands. ()

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 red cedar being the stand climax species. ()

d. Western hemlock-subalpine fir (WH): higher-elevation, moist, cool interior forests dominated by western hemlock, mountain hemlock, and/or subalpine fir. ()

e. Douglas-fir-ponderosa pine (PP): drier forests dominated by ponderosa pine and Douglas-fir, generally found in lower-elevation, dry sites. ()

245. 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)

256. Ground Based Equipment. Mobile equipment such as tractors, dozers, skidders, 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. (4-4-13)

267. Habitat Types. Forest land capable of producing similar plant communities at climax. (7-1-96)

278. 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)

289. Hazard. Any vegetative residue resulting from a forest practice which constitutes fuel. (1-24-78)

2930. Hazard Offset. Improvements or a combination of practices which reduces the spread of fire and increases the ability to control fires. (10-14-75)

301. 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)

342. 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)

323. 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)

334. Landowner. A person, partnership, corporation, or association of whatever nature that holds an ownership interest in forest lands, including the state. (10-14-75)

345. 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)

356. 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)

367. 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)

378. Noncommercial Forest Land. Habitat types not capable of producing twenty (20) cubic feet per acre per year. (7-1-96)

389. Operator. A person who conducts or is required to conduct a forest practice. (10-14-75)

3940. Operating Area. That area where a forest practice is taking place or will take place. (1-24-78)

401. 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)

412. 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)

423. 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)

434. 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)

445. Present Condition of Area. The amount or degree of hazard present before a thinning operation

commences. (1-24-78)

456. Public Resource. Water, fish, and wildlife, and in addition means capital improvements of the State or its political subdivisions. (10-14-75)

467. 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. Relative Stocking. A measure of site occupancy calculated as a ratio comparison of actual stand density to the biological maximum density for a given forest type. This ratio, expressed as a percentage, shows the extent to which trees utilize a plot of forestland. ()

479. Relief Culvert. A structure to relieve surface runoff from roadside ditches to prevent excessive buildup in volume and velocity. (10-14-75)

4850. Rules. Rules adopted by the Board pursuant to Section 38-1304, Idaho Code. (7-1-96)

4951. Slash. Any vegetative residue three inches (3") and under in diameter resulting from a forest practice or the clearing of land. (7-1-96)

502. 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)

513. 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)

524. 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)

535. 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)

546. Snags. Dead, standing trees twenty (20) feet and greater in height. (1-24-78)

557. Soil Erosion. Movement of soils resulting from forest practices. (10-14-75)

568. Soil Stabilization. The minimizing of soil movement. (10-14-75)

579. State. The state of Idaho or other political subdivision thereof. (10-14-75)

5860. 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)

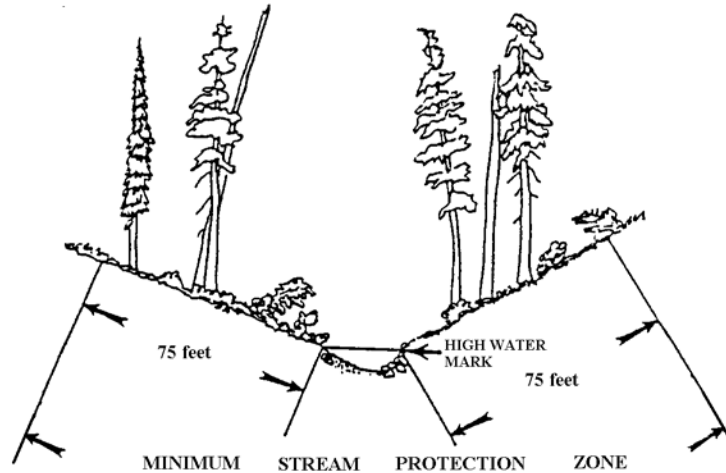
b. Class II streams are usually headwater streams or minor drainages that are used by only a few, if any, fish for spawning or rearing. Where fish use is unknown, consider streams as Class II where the total upstream watershed is less than two hundred and forty (240) acres in the north forest region 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.)

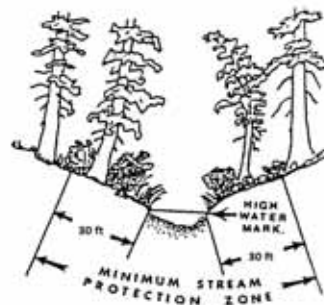
FIGURE 1
CLASS 1 STREAM PROTECTION ZONE



(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)()

5961. 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)

602. 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)

(BREAK IN CONTINUITY OF SECTIONS)

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 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 equipment shall not be 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. (4-4-13)

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, outsliping, 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 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. (4-4-13)

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.~~ Adjacent to all Class I streams, to maintain and enhance shade and large woody debris recruitment, landowners must comply with one of the two following options defining tree retention. The Relative Stocking per acre (RS) referenced in the options is calculated according to the relative-stocking-contribution table in Subsection 030.07.e.ii. ~~(4-11-06)()~~

(1) Option 1: Within twenty-five (25) feet from the ordinary high water mark on each side of the

stream, live conifers and hardwoods will be retained to maintain a minimum relative stocking per acre of sixty (60). A relative stocking per acre of thirty (30) must be retained in the stream protection zone between twenty-five (25) feet and seventy-five (75) feet from the ordinary high water mark on both sides of the stream. ()

(2) Option 2: Within fifty (50) feet from the ordinary high water mark on each side of a stream, live conifers and hardwoods will be retained to maintain a minimum relative stocking per acre of sixty (60). A relative stocking per acre of ten (10) must be retained in the stream protection zone between fifty (50) feet and seventy-five (75) feet from the ordinary high water mark on both sides of the stream. ()

(3) Only one (1) option may be implemented within the stream protection zones of a harvesting unit covered by a single notification. Landowners are strongly encouraged to retain all trees immediately adjacent to the stream. ()

Forest Type	Per Tree Contribution to Relative Stocking by Diameter Class						
	Diameter Class (DBH in inches)						
	4-7.9"	8-11.9"	12-15.9"	16-19.9"	20-23.9"	24-27.9"	28-31.9"
NIGF (North Idaho Grand Fir)	0.097	0.209	0.347	0.506	0.683	0.878	1.088
CIGF (Central Idaho Grand Fir)	0.113	0.244	0.405	0.59	0.797	1.024	1.27
SIGF (Southern Idaho Grand Fir)	0.136	0.293	0.486	0.708	0.957	1.229	1.524
WHSF (Western Hemlock-Subalpine Fir)	0.123	0.267	0.442	0.644	0.87	1.117	1.385
DFPP (Douglas-fir-Ponderosa Pine)	0.151	0.326	0.54	0.787	1.063	1.366	1.693

()

iii. Adjacent to all Class II streams, standing trees will be retained within thirty (30) feet on each side of the stream's ordinary high water mark to comply with the minimum stocking standards expressed in Subsection 050.04. Exceptions shall only be made for the felling of stems less than eight (8) inches DBH necessary to comply with logging-safety standards (IDAPA 17.08.08, "Idaho Minimum Safety Standards and Practices for Logging - Falling and Bucking"). Reasonable and prudent efforts will be made to protect the filtering and shade effects of the streamside vegetation during hazard management activities following harvest. ()

iv. 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)

v. 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)

vi. 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)

~~vii. 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"	21	21	--	--
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 (1 1/2) 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)

viii. 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)

~~ix. 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)

~~xviii.~~ 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 aquatic or wildlife habitat, including snags, especially within stream protection zones. Wherever practical, preserve fruit, nut, and berry producing trees and shrubs. (4-4-13)

c. Avoid conducting operations along or through bogs, swamps, wet meadows, springs, seeps, wet draws or other 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 soil and vegetation from disturbance which would cause adverse

affects on water quality, quantity and wildlife and aquatic habitat.

(4-4-13)

d. 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 ($\frac{1}{4}$) mile.

(4-4-13)

IDAPA 23 - BOARD OF NURSING

23.01.01 - RULES OF THE IDAHO BOARD OF NURSING

DOCKET NO. 23-0101-1301

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 September 18, 2013.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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:

Delegation is the process of transferring to a competent individual the authority to perform a selected nursing task in a selected situation. The nurse's decision to delegate a specific task/function/activity should not be restricted by regulation but should, instead, be dependent on the needs of the client, stability of client condition, complexity of the task, predictability of outcome and available resources to meet these needs and the judgment of the nurse. This rule is necessary to allow licensed nurses to appropriately delegate without limiting their authority to determine which tasks can be safely delegated in any individual circumstance and/or setting and to engage in other relationships where the structure and/or setting is not conducive to the delegation process and where the patient/client will benefit from the identified role and responsibilities of the nurse. Thus rulemaking deletes the list of specific functions codified at IDAPA 23.01.01.490.06 that cannot be delegated to an unlicensed assistive person by a licensed nurse, thereby allowing nurses to determine appropriate tasks/functions/activities that can be safely delegated in a given situation based on the nurse's informed judgment that the safety and well-being of the client will not be compromised by delegation of the task; and adds to the partial listing of tasks that fall within a licensed nurse's functions to include engaging in interfaces other than delegation in certain settings codified at IDAPA 23.01.01.401.02 and 460.02.

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 3, 2013 Idaho Administrative Bulletin, [Vol. 13-7, pages 69 and 70](#).

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, (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 September 25, 2013.

DATED this 31st day of July, 2013.

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
Phone: 334-3110 ext. 2476 / Fax: (208) 334-3536

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 23-0101-1301

401. LICENSED REGISTERED NURSE (RN).

In addition to providing hands-on nursing care, licensed registered nurses work and serve in a broad range of capacities including, but not limited to, regulation, delegation, management, administration, teaching, and case management. Licensed registered nurses, also referred to as registered nurses or as “RNs,” are expected to exercise competency in judgment, decision making, implementation of nursing interventions, delegation of functions or responsibilities, and administration of medications and treatments prescribed by legally authorized persons. (5-3-03)

01. Standards of Practice. A licensed registered nurse adheres to the decision-making model set forth in Section 400 of these rules. (5-3-03)

02. Functions. A partial listing of tasks within the licensed registered nurse’s function follows. This listing is for illustrative purposes only, it is not exclusive. The licensed registered nurse: (5-3-03)

- a. Assesses the health status of individuals and groups; (5-3-03)
- b. Utilizes data obtained by assessment to identify and document nursing diagnoses which serve as a basis for the plan of nursing care; (5-3-03)
- c. Collaborates with the patient, family, and health team members; (5-3-03)
- d. Develops and documents a plan for nursing intervention based on assessment, analysis of data, identified nursing diagnoses and patient outcomes; (5-3-03)
- e. Is accountable and responsible for implementation of planned and prescribed nursing care;(5-3-03)
- f. Maintains safe and effective nursing care by: (5-3-03)
 - i. Maintaining a safe environment; (5-3-03)
 - ii. Evaluating patient status and instituting appropriate therapy or procedures which might be required in emergency situations to stabilize the patient’s condition or prevent serious complications in accordance with standard procedures established by the policy-making body in the health care setting, including but not limited to administration of intravenous drugs and starting intravenous therapy based on protocols if the patient has been assessed and determined to be in peril; (5-3-03)
- iii. Acting as a patient’s advocate; (5-3-03)
- iv. Applying principles of asepsis and infection control and universal standards when providing nursing care; (5-3-03)
- v. Implementing orders for medications and treatments issued by an authorized prescriber; and (5-3-03)
- vi. Providing information and making recommendations to patients and others in accordance with employer policies; (5-3-03)
- g. Utilizes identified goals and outcomes to evaluate responses to interventions; (5-3-03)
- h. Collaborates with other health professionals by: (5-3-03)
 - i. Communicating significant changes in a patient’s status or responses to appropriate health team professionals; (5-3-03)

- ii. Coordinating the plan of care with other health team professionals; and (5-3-03)
- iii. Consulting with nurses and other health team members as necessary; (5-3-03)
- i. Teaches the theory and practice of nursing; and (5-3-03)
- j. Facilitates, mentors and guides the practice of nursing formally and informally in practice settings. (5-3-03)

k. Engages in other interfaces with healthcare providers and other workers in settings where there is not a structured nursing organization and in settings where health care plays a secondary role, where the nurse needs to identify the nursing role and responsibility for the particular type of interface, for example, teaching, supervising, consulting, advising, etc. ()

03. Chief Administrative Nurse. A licensed registered nurse functioning as chief administrative nurse is accountable and responsible for: (5-3-03)

- a. Prescribing, directing and evaluating the quality of nursing services including but not limited to staff development and quality improvement; (7-1-96)
- b. Assuring that organizational policies and procedures, job descriptions and standards of nursing practice conform to the Nursing Practice Act and nursing practice rules; (7-1-96)
- c. Assuring that the knowledge, skills and abilities of nursing care staff are assessed and that nursing care activities do not exceed the legally defined boundaries of practice; and (7-1-96)
- d. Assuring that documentation of all aspects of the nursing organization is maintained. (7-1-96)

04. Management Role. A licensed registered nurse functioning in a management role shall be accountable and responsible for: (5-3-03)

- a. The quality and quantity of nursing care provided by nursing personnel under his supervision; (5-3-03)
- b. Managing and coordinating nursing care in accordance with established guidelines for delegation; and (5-3-03)
- c. Providing leadership in formulating, interpreting, implementing, and evaluating the objectives and policies of nursing practice. (7-1-96)

(BREAK IN CONTINUITY OF SECTIONS)

460. LICENSED PRACTICAL NURSE (LPN).

Licensed practical nurses function in dependent roles. Licensed practical nurses, also referred to as LPNs, provide nursing care at the delegation of a licensed registered nurse, licensed physician, or licensed dentist pursuant to rules established by the Board. The stability of the patient's environment, the patient's clinical state, and the predictability of the outcome determine the degree of direction and supervision that must be provided to the licensed practical nurse. (5-3-03)

01. Standards. The licensed practical nurse shall be personally accountable and responsible for all actions taken in carrying out nursing activities and adheres to the decision-making model set forth in Section 400 of these rules. (5-3-03)

02. Functions. A partial listing of some of the functions that are included within the legal definition of licensed practical nurse, Section 54-1402(3), Idaho Code, (Nursing Practice Act) follows. This list is for example

only, it is not complete. The licensed practical nurse: (5-3-03)

- a. Contributes to the assessment of health status by collecting, reporting and recording objective and subjective data; (5-3-03)
- b. Participates in the development and modification of the plan of care; (5-3-03)
- c. Implements aspects of the plan of care; (5-3-03)
- d. Maintains safe and effective nursing care; (5-3-03)
- e. Participates in the evaluation of responses to interventions; (5-3-03)
- f. Fulfills charge nurse responsibilities in health care facilities as allowed by state and federal law; (5-3-03)
- g. Delegates to others as allowed by application of the decision-making model; and (5-3-03)
- h. Accepts delegated assignments only as allowed by application of the decision-making model. (5-3-03)

i. Engages in other interfaces with healthcare providers and other workers in settings where there is not a structured nursing organization and in settings where health care plays a secondary role, where the nurse needs to identify the nursing role and responsibility for the particular type of interface, for example, teaching, supervising, consulting, advising, etc. ()

461. -- 489. (RESERVED)

490. UNLICENSED ASSISTIVE PERSONNEL (UAP).

The term unlicensed assistive personnel, also referred to as “UAP,” is used to designate unlicensed personnel employed to perform nursing care services under the direction and supervision of licensed nurses. The term unlicensed assistive personnel also includes licensed or credentialed health care workers whose job responsibilities extend to health care services beyond their usual and customary roles and which activities are provided under the direction and supervision of licensed nurses. (5-3-03)

01. Not a Substitute for the Licensed Nurse. Unlicensed assistive personnel may complement the licensed nurse in the performance of nursing functions, but may not substitute for the licensed nurse; unlicensed assistive personnel may not redelegate a delegated act. (5-3-03)

02. Delegation. The nursing care tasks that may be delegated to unlicensed assistive personnel shall be stated in writing in the practice setting. Decisions concerning delegation will be determined in accordance with the provisions of Section 400 of these rules. (5-3-03)

03. Training. The following training requirements apply to all unlicensed assistive personnel. The training program shall: (5-3-03)

- a. Include written objectives which describe the expected outcomes for the learner and which can be evaluated by written or oral examination and by clinical demonstration of competency or application; (5-3-03)
- b. Incorporate learning experiences appropriate to the stated objectives; (5-3-03)
- c. Be conducted by licensed registered nurses and other licensed health professionals, including, but not limited to, physicians, pharmacists, psychologists, social workers, and dieticians; (5-3-03)
- d. Include an evaluation mechanism to determine the effectiveness of the program; and (5-3-03)
- e. Address the general unlicensed assistive personnel curriculum content areas set forth in Paragraph

681.04.g. of these rules. (5-3-03)

04. Nurse Aide Registry. In addition to the foregoing training requirements, UAP desiring placement on the Nurse Aide Registry must comply with the requirements set forth in Sections 600 through 681 of these rules. (5-3-03)

05. Assistance With Medications. Where permitted by law, after completion of a Board-approved training program, unlicensed assistive personnel in care settings may assist patients who cannot independently self-administer medications, provided that: (5-3-03)

- a. A plan of care has been developed by a licensed registered nurse; (7-1-96)
- b. The act has been delegated by a licensed nurse; (7-1-96)
- c. Written and oral instructions have been given to the unlicensed assistive personnel by a licensed nurse concerning the reason(s) for the medication, the dosage, expected effects, adverse reactions or side effects, and action to take in an emergency; (7-1-96)
- d. The medication is in the original pharmacy-dispensed container with proper label and directions or in an original over-the-counter container or the medication has been removed from the original container and placed in a unit container by a licensed nurse. Proper measuring devices must be available for liquid medication that is poured from a pharmacy-dispensed container. Inventories of narcotic medications must be maintained; (7-1-96)
- e. Any medication dosages not taken and the reasons thereof are recorded and reported to appropriate supervisory persons; and (5-3-03)
- f. Assistance with medication may include: breaking a scored tablet, crushing a tablet, instilling eye, ear or nose drops, giving medication through a pre-mixed nebulizer inhaler or gastric (non-nasogastric) tube, assisting with oral or topical medications and insertion of suppositories. (7-1-96)

06. Prohibitions and Limitations. Unlicensed assistive personnel are prohibited from performing any licensed nurse functions that are specifically defined in Section 54-1402, Idaho Code. (~~3-30-07~~)

~~a.~~ Unlicensed assistive personnel may not be delegated procedures involving acts that require nursing assessment or diagnosis, establishment of a plan of care or teaching, the exercise of nursing judgment, or procedures requiring specialized nursing knowledge, skills or techniques. (~~5-3-03~~)()

~~b.~~ *Examples of procedures that should not be delegated to unlicensed assistive personnel include, but are not limited to:* (5-3-03)

- ~~i.~~ *Sterile procedures;* (5-3-03)
- ~~ii.~~ *Preparation or administration of injections;* (5-3-03)
- ~~iii.~~ *Start, stop or adjust any IV therapy;* (5-3-03)
- ~~iv.~~ *Oxygen adjustment without clear direction from a licensed nurse;* (5-3-03)
- ~~v.~~ *Nasogastric tube feedings or medication administration;* (5-3-03)
- ~~vi.~~ *Mixing or compounding medications;* (5-3-03)
- ~~vii.~~ *Prepare, apply or adjust intermittent positive pressure breathing machines;* (5-3-03)
- ~~viii.~~ *Assisting with either preparation or administration of non-routine medications; and* (5-3-03)
- ~~ix.~~ *Any act not consistent with Subsection 490.02 of these rules.* (5-3-03)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.06.01 - RULES FOR THE LICENSURE OF OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS

DOCKET NO. 24-0601-1301

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2013.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-3717, 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 September 18, 2013.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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:

House Bill 33 which passed in the 2013 legislative session allows the Board to issue a limited permit for a period of six (6) months or as extended by the Board. The Occupational Therapy Licensure Board is updating the limited permit rules to comply with the statute.

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:

House Bill 33 which passed in the 2013 legislative session allows the Board to issue a limited permit for a period of six (6) months or as extended by the Board. The Board is updating the limited permit rules to comply with the law change.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rules pertaining to limited permits require amendment to comply with the law change approved in 2013.

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 Cherie Simpson at 208 334-3233.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 25, 2013.

DATED this 9th day of August, 2013.

Tana Cory
Bureau Chief
Bureau of Occupational Licenses
700 W State St.
P O Box 700
Boise, ID 83720-0063
208 334-3233 208 334-3945 fax

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 24-0601-1301**

021. APPLICATION FOR LICENSURE.

01. Licensure by Examination. Each applicant for licensure by examination shall submit a completed written application to the Board, on forms prescribed by the Board, together with the application fee. The application shall be verified and under oath and shall require the following information: (7-1-99)

a. A certificate of graduation from an approved occupational therapy curriculum; or an approved occupational therapy assistant's curriculum accredited by the American Occupational Therapy Association's Accreditation Council for Occupational Therapy Education, or an accrediting agency recognized by the United States Secretary of Education, the Council for Higher Education Accreditation, or both; (4-2-03)

b. The disclosure of any criminal conviction or charges against the applicant other than minor traffic offenses; (1-5-88)

c. The disclosure of any disciplinary action against the applicant by any state professional regulatory agency or professional organization; (1-5-88)

d. The disclosure of the issuance or denial of registration or licensure by any state or district regulatory body; (4-2-03)

e. Not less than two (2) certificates of recommendation from persons having personal knowledge of the applicant's character; (1-5-88)

f. One (1), three by four inch (3" x 4") or smaller unmounted photograph of the applicant's head and shoulders, taken not more than one (1) year before the application date; (3-29-10)

g. Such other information as deemed necessary for the Board to identify and evaluate the applicant's credentials; and (1-5-88)

h. A copy of the application to write the qualifying exam and the date the examination is scheduled. (1-5-88)

02. Licensure by Endorsement. An applicant may be eligible for licensure without examination if he or she meets all of the other qualifications prescribed in Section 54-3709, Idaho Code, and also holds a current valid license or registration from some other state, territory or district of the United States, or certified by the National Board for Certification in Occupational Therapy providing they meet Idaho standards and are equivalent to the requirements for licensure pursuant to these rules. (3-29-10)

a. Each applicant for licensure by endorsement shall submit a completed written application to the Board on forms prescribed by the Board, together with the application fee. The application shall be verified, under

oath, and contain the specific information in Subsection 021.01.a. through 021.01.g. of these rules. (3-29-10)

- b. Proof of such licensure or registration shall be verified in a manner acceptable to the Board. (1-5-88)

03. Limited Permit. The Board may issue a Limited Permit to a graduate occupational therapist or graduate occupational therapy assistant who meets the requirements set forth by Sections 54-3706(1) and 54-3706(2), Idaho Code, who has not yet passed the examination as required in Paragraph 020.04.a. of these rules. (3-29-10)

a. Each person applying for a limited permit must submit a completed written application to the Board on forms prescribed by the Board, together with the required fee. (3-29-10)

b. A Limited Permit shall only allow a person to practice occupational therapy in association with and under the supervision of a licensed occupational therapist. (1-5-88)

c. A Limited Permit shall be valid ~~only until the person is granted or denied a license under Section 54-3710, Idaho Code, or until the results of the examination are available to the Board, whichever occurs first; provided however, a Limited Permit shall not be effective for more than~~ six (6) months from the date of issue. ~~(3-29-10)~~(7-1-13)T

d. A Limited Permit may ~~only~~ be ~~renewed once~~ extended by the Board for good cause. ~~(1-5-88)~~(7-1-13)T

04. Temporary License. The Board may issue a temporary license to a person applying for licensure as an occupational therapist or an occupational therapy assistant if the person is currently licensed and in good standing to practice in another jurisdiction and meets that jurisdiction's requirements for licensure by endorsement. (3-29-10)

a. Each person applying for temporary licensure must submit a completed written application to the Board on forms prescribed by the Board, together with the required fee. (3-29-10)

b. A temporary license shall automatically expire once the Board has processed the person's application for licensure and issued or denied the applied-for license, or in six (6) months after the date on which the Board issued the temporary license, whichever is sooner. (3-29-10)

05. Personal Interview. The Board may, at its discretion, require the applicant to appear for a personal interview. (1-5-88)

06. Occupational Therapists Practicing in Idaho on Effective Date of These Rules. All persons practicing occupational therapy in Idaho and holding American Occupational Therapy Certification Board (AOTCB) registration on January 5, 1988, shall qualify for license by endorsement. (3-29-10)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.07.01 - RULES OF THE IDAHO STATE BOARD OF LANDSCAPE ARCHITECTS

DOCKET NO. 24-0701-1301 (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 54-3003, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 18, 2013.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 Council of Landscape Architectural Registration Boards (CLARB) has changed the examination to on-line and applicants now apply directly to the exam provider to take the examination. The Board is amending its rule to allow for the change in the examination process. The Board is currently required to meet in April and October of each year. The Board is amending the rule to require that it meet twice yearly and at such other times as it deems necessary.

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

Rule 400 is being amended to remove the processing fee for the examination as the examination is scheduled and taken through the examination provider.

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

This rulemaking is anticipated to reduce the Board's dedicated fund by approximately \$225 per year based on the number of examination applicants in the last calendar year.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is simple in nature and was discussed during a noticed open meeting 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: 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 September 25, 2013.

DATED this 9th day of August, 2013.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W State St.
P O Box 83720
Boise, ID 83720-0063
208 334-3233 phone 208 334-3945 fax

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 24-0701-1301

201. APPLICATION FORM (RULE 201).

01. Reference Requirements. Applicants are required to furnish the Board with four (4) references. Two (2) of the references must be from currently licensed Landscape Architects. The remaining two (2) may be licensed landscape architects, licensed engineers, licensed architects, or any combination thereof. All references must be from competent individuals who are well acquainted with the applicant's character and professional ability.

(3-29-10)

02. Materials Submitted to Board. All required applications, statements, fees and other documentation must be submitted to the Board in care of the Bureau of Occupational Licenses, and shall include:

(3-20-04)

a. A passport photograph taken within thirty (30) days of the date of application; (3-20-04)

b. Documentation of being at least eighteen (18) years of age at the time of application; and (3-20-04)

c. Either certification of graduation from an approved college or school of landscape architecture; or
(3-20-04)

d. Documentation of all actual landscape architectural or other applicable experience signed by the person under whose supervision the work was performed, giving kind and type of work done, together with dates of employment: and

(3-20-04)()

e. Proof of successful passage of an examination approved by the Board. ()

03. Deadlines. To be considered by the Board, completed applications must be received by the Bureau ~~at least thirty (30) days~~ prior to ~~the first day of the month in which~~ the next scheduled meeting of the Board ~~will meet~~. ~~Applications for examination must be filed with the Bureau of Occupational Licenses by April 1 for the June examination, or October 1 for the December examination.~~

(3-20-04)()

04. Inactive Applications. Applications on file with the Board where an applicant has failed to respond to a Board request or where the applications have lacked activity for twelve (12) consecutive months shall be deemed denied and shall be terminated upon thirty (30) days written notice unless good cause is established to the Board.

()

(BREAK IN CONTINUITY OF SECTIONS)

300. EXAMINATIONS (RULE 300).

The examination ~~shall be that published~~ prepared by the Council of Landscape Architectural Registration Boards is an approved examination. ~~Examinations will be in the months of June and December.~~ The Board may approve other examinations it deems appropriate.

(3-20-04)()

01. Minimum Passing Score. The minimum passing score for each section of the examination shall be seventy-five percent (75%).

(7-1-93)

02. Failing a Section of Exam. An applicant failing any section of the examination will be required to retake only that section failed.

(7-1-93)

~~03. Required Forms. Each applicant approved for examination must provide notice of intent to sit for~~

~~examination on a form approved by the Board. Notice of intent to sit for examination must be filed with the Bureau of Occupational Licenses by April 1 for the June examination, or October 1 for the December examination. (3-20-04)~~

~~**04. Reexamination.** Applicants applying for reexamination must file an application of intent to sit for examination by April 1 for the June examination, or October 1 for the December examination. The fees for reexamination shall be the same as those for examination and must accompany the application of intent to sit. (3-20-04)~~

(BREAK IN CONTINUITY OF SECTIONS)

400. FEES (RULE 400).

Fees are not refundable, therefore, applications should not be filed unless the applicant can meet all requirements. (7-1-93)

01. Application Fee. Application Fee ~~(Original-Reapplication-Endorsement):~~ One hundred dollars (\$100). ~~(3-20-04)()~~

02. Landscape Architect-in-Training Application Fee. Landscape architect-in-training application fee: Twenty-five dollars (\$25). (3-26-08)

03. Examination Fees. Examination fees will be as established by the Council of Landscape Architectural Registration Boards. (3-20-04)

04. Original License and Annual License Fee. Original license and annual license fee: One hundred fifty dollars (\$150). (3-21-07)

05. Reinstatement Fee. Reinstatement fee: Twenty-five dollars (\$25). (7-1-93)

~~**06. Processing Fee.** Applicants for examination must submit a twenty five dollar (\$25) processing fee, together with the examination fees and the application fee. (3-20-04)~~

(BREAK IN CONTINUITY OF SECTIONS)

500. MEETINGS (RULE 500).

Board meetings will be held ~~in April and October of each~~ at least twice yearly and at such other times as the Board deems necessary. ~~(3-20-04)()~~

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.08.01 - RULES OF THE STATE BOARD OF MORTICIANS

DOCKET NO. 24-0801-1301

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 54-1107, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 18, 2013.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 Morticians has been working with the Idaho Funeral Service Association to establish alkaline hydrolysis as an approved cremation process and to clarify that funeral directors can sign certain records. The Board is updating its discipline rule to include Funeral Directors.

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 rule is simple in nature and was discussed during a noticed open meeting 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: 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 September 25, 2013.

DATED this 9th day of August, 2013.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W State St.
P O Box 83720
Boise, ID 83720-0063
208 334-3233 phone 208 334-3945 fax

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-0801-1301

450. FUNERAL ESTABLISHMENT AND CREMATORY ESTABLISHMENT (RULE 450).

All applicants for establishment license shall submit a completed application on a form approved by the Board. All newly licensed establishments and all branch or satellite facilities must meet the same requirements for licensure. (4-2-08)

01. Contents of Application. Each applicant for a license to operate a funeral establishment or crematory establishment in Idaho shall document the following: (4-2-08)

- a.** Name and address of owner whether individual or entity; and (4-2-08)
- b.** Notarized signature of applicant or authorized agent; and (4-2-08)
- c.** Name and license number of responsible licensee; and (4-2-08)
- d.** Other such information as the board may require. (4-2-08)

02. Change in Ownership or Location. Any change in the ownership or location of a funeral establishment shall constitute a new funeral establishment for the purposes of licensure. (7-1-93)

03. Funeral Establishment. All funeral establishments shall be required to provide each of the following: (4-2-08)

- a.** An operating room and necessary equipment for embalming; (4-2-08)
- b.** A selection room for caskets and merchandise which may include video, catalogs, and electronic depiction of caskets and merchandise; (4-2-08)
- c.** A chapel where funeral or other religious ceremonies may be held; and (4-2-08)
- d.** A room for viewing and visitation. (4-2-08)

04. Funeral Firm. Every funeral firm in the state of Idaho and/or licensee thereof shall give or cause to be given to the person or persons making funeral arrangements or arranging for the disposition of the dead human body at the time of said arrangements and prior to rendering that service or providing that merchandise, a written statement showing to the extent then known the following: (7-1-93)

- a.** The price of the service that the person or persons have selected and what is included therein. (7-1-93)
- b.** The prices of each of the supplementary items of service and/or merchandise requested. (7-1-93)
- c.** The amount involved for each of the items for which the firm will advance monies as an accommodation for the family. (7-1-93)
- d.** The method of payment. (7-1-93)
- e.** If the quoted price includes a basic component of a funeral or a part thereof which is not desired, then a credit thereof should be granted. (7-1-93)

05. Crematory Establishment. All crematory establishments shall be required to provide each of the following: (4-2-08)

- a.** Detailed information regarding each retort, specifically documenting that each retort and accompanying equipment is listed by an approved testing agency as listed in the Uniform Fire Code or in the case of alkaline hydrolysis, a pressurized vessel heated to 150 C (330 F) for a minimum recommended period of thirty (30)

minutes, thereby meeting or exceeding the United States Center for Disease Control (CDC) requirements for the complete destruction of human pathogens; and ~~(4-2-08)~~()

b. One (1) set of blueprints for the proposed new construction or remodeling where the retort is to be located. The blueprints must be approved by the local building department as being in compliance with applicable building codes and ordinances. (4-2-08)

451. (RESERVED)

452. MINIMUM STANDARDS (RULE 452).

01. Reasonable Sanitation and Safety Required. In the interest of the protection of the public welfare, no license will be issued on an application to operate a funeral establishment or crematory unless it is apparent that the establishment or crematory can and will be operated in a reasonably sanitary and safe manner and that all pertinent federal, state, and local permits have been obtained when operating an alkaline hydrolysis retort. ~~(4-11-06)~~()

02. Reduction of Cremated Remains. No crematory will be licensed or operated unless it is capable of reducing human remains to cremains containing not more than five percent (5%) of the weight of the body immediately after death. (3-16-04)

03. Delay Before Cremation. No dead human body, regardless of cause of death, is to be cremated, nor is actual cremation of such a body to be commenced, unless the county coroner in the county in which the death occurred gives his written authorization to cremate the body. (3-16-04)

04. Embalming. If a dead human body is to be held longer than twenty-four (24) hours prior to burial, cremation, or other disposition, the body must be either embalmed or refrigerated at thirty-six degrees Fahrenheit (36F) or less until buried, cremated, or otherwise disposed of. (4-11-06)

05. Casket Not Necessary. It is not necessary for the body to be in a casket for cremation to take place. (3-16-04)

a. This is not to be construed to mean that the crematory must cremate without a casket; and (3-16-04)

b. It will not prevent the operators from developing their own internal requirements for aesthetic or sanitary reasons. (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

455. RESPONSIBILITY, INSPECTION, AND CONFIDENTIALITY OF RECORDS (RULE 455).

01. Responsibility for Record. Records regarding the burial, cremation, and other disposition of human bodies must be made as soon as reasonably possible after the burial, cremation, or other disposition and must be dated and signed by the licensed mortician or funeral director who supervised or was otherwise directly responsible for the burial, cremation, or other disposition. ~~(4-11-06)~~()

02. Inspection of Records. Records regarding the receipt, burial, cremation, and other disposition of human bodies must be maintained at the funeral establishment and crematory and be open for inspection at any reasonable time by the Board or its designated representatives. (4-11-06)

03. Confidentiality of Records. Any disclosure of information obtained by the Board in connection with licensure activities and records of funerals or cremations must comply with Idaho Public Records Act 9-337 et seq., Idaho Code. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

501. DISCIPLINE (RULE 501).

01. Civil Fine. The Board may impose a civil fine not to exceed one thousand dollars (\$1,000) upon a licensed ~~de mortician~~ for each violation of Section 54-1116, Idaho Code. ~~(3-18-99)~~()

02. Costs and Fees. The Board may order a licensed ~~de mortician~~ to pay the costs and fees incurred by the Board in the investigation or prosecution of the licensee ~~for~~ if found in violation of Section 54-1116, Idaho Code. ~~(3-18-99)~~()

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.14.01 - RULES OF THE STATE BOARD OF SOCIAL WORK EXAMINERS
DOCKET NO. 24-1401-1301
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is June 19, 2013.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-3204, 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 September 18, 2013.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 allow experience obtained in any state to qualify for supervisor registration. The current rule affects the ability of those social workers moving to Idaho from other states to immediately qualify as a supervisor. The Board is also clarifying that the supervision rule only applies to those individuals in Idaho pursuing licensure. The Board does not have any jurisdiction over individuals practicing outside of Idaho.

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 Board of Social Work Examiners is revising its supervisor registration rule to allow the experience obtained in other states to qualify for registration. Currently, only Idaho experience qualifies. The Board is also clarifying when postgraduate supervision is required.

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 the rule being amended confers a benefit to potential supervisors and clarifies when post graduate supervision of an individual is necessary.

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 Cherie Simpson at 208 334-3233.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 25, 2013.

DATED this 9th day of August, 2013.

Tana Cory
Bureau Chief
Bureau of Occupational Licenses
700 W State St.
P O Box 700
Boise, ID 83720-0063
208 334-3233 208 334-3945 fax

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 24-1401-1301**

211. SOCIAL WORK SUPERVISOR REGISTRATION (RULE 211).

Idaho licensed social workers shall be registered with the Board in order to provide postgraduate supervision for those individuals in Idaho pursuing licensure ~~in Idaho~~ as a clinical social worker. ~~(4-4-13)~~(6-19-13)T

01. Requirements for Registration. (3-14-05)

a. Document at least two (2) years experience as ~~an Idaho~~ licensed clinical social worker. ~~(4-4-13)~~(6-19-13)T

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. (4-4-13)

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 remain valid only so long as the individual's clinical social worker license remains current and in good standing. (4-4-13)

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: (4-4-13)

a. Hold an active Idaho clinical social worker license which has not been subject to discipline and is current and in good standing; and (4-4-13)

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. (4-4-13)

c. For supervisors registered prior to the effective date of this rule subsection 211.03., the following renewal requirements and conditions apply: (4-4-13)

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. (4-4-13)

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.
(4-4-13)

IDAPA 28 - DEPARTMENT OF COMMERCE

28.03.01 - RULES OF THE IDAHO OPPORTUNITY FUND

DOCKET NO. 28-0301-1301 (NEW CHAPTER)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 1, 2013.

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 67-4733, Idaho Code, and Sections 67-4732 through 67-4736, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 18, 2013.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 comprehensive rules will govern the Idaho Opportunity Fund as enacted in House Bill 100. House Bill 100 formally established the Idaho Opportunity Fund and added five new Sections to 67-4732 through 67-4736, Idaho Code. These rules are necessary to outline the specific parameters for the award and disbursement of Idaho Opportunity Fund grants to cities and counties.

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

This temporary rule is being adopted to bring the rule into compliance with the statutory changes made by House Bill 100. The temporary rule also confers a benefit to cities and counties that may be eligible for these funds.

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:

House Bill 100 formally established the Idaho Opportunity Fund in the Idaho State Treasury. In Fiscal Year 2014 the Idaho Opportunity Fund will be funded as follows:

\$400,000 ongoing appropriation in Department of Commerce budget (General Fund); and
\$3,000,000 in onetime funding in Department of Commerce budget (General Fund).

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, it was not feasible to conduct negotiated rulemaking because of the need to adopt this rule as a temporary 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: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Megan Ronk, Chief Communications & Governmental Affairs Officer, Idaho Department of Commerce at (208) 334-2470.

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 September 25, 2013.

DATED this 31st day of July, 2013

Megan Ronk
Chief Communications & Governmental Affairs Officer
Idaho Department of Commerce
700 W State Street
Boise, ID 83702
Phone: 208-334-2470
Fax: 208-334-2631

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 28-0301-1301**

**IDAPA 28
TITLE 03
CHAPTER 01**

28.03.01 - RULES OF THE IDAHO OPPORTUNITY FUND

000. LEGAL AUTHORITY.

These rules are promulgated under the legal authority of Section 67-4733, Idaho Code. (8-1-13)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 28.03.01, "Rules of the Idaho Opportunity Fund." (8-1-13)T

02. Scope. These rules implement House Bill H100, enacted by the First Regular Session of the Sixty-second Legislature and signed into law on March 21, 2013. These rules amend Chapter 47, Title 67, Idaho Code, by the addition of new sections 67-4732 through 67-4736, Idaho Code. The three (3) new sections provide a short title and legislative intent, provide rulemaking authority to the Director of the Department of Commerce create the Opportunity Fund in the State Treasury, provide for the makeup and use of the fund, provide that agreements are required for disbursement of funds and provide for annual reporting by the Director of the Department of Commerce. (8-1-13)T

002. WRITTEN INTERPRETATIONS.

The Department has no written interpretations of these rules. (8-1-13)T

003. ADMINISTRATIVE APPEALS.

The award of grants under the Opportunity Fund are made at the discretion of the Director of the Department of Commerce. In light of the discretionary nature of awarding these grants, there is no administrative appeal under these rules. (8-1-13)T

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

The mailing address of the Department for information regarding the Opportunity Fund Act is: 700 West State Street, PO Box 83720, Boise, ID 83702-0093; the telephone number is (208) 334-2470; and the facsimile number is (208) 334-2631. Documents may be filed at the state office during regular business hours of 8am to 5pm, Monday through

Friday, excluding holidays. (8-1-13)T

005. PUBLIC RECORDS ACT COMPLIANCE.

All rules contained in this chapter are subject to and in compliance with the Idaho Public Records Act (title 9, chapter 3, Idaho Code). (8-1-13)T

006. -- 009. (RESERVED)

013. DEFINITIONS.

01. Company Performance Agreement. An agreement between a local government and a Grantee Business, in addition to any requirements in rules adopted by the Department. (8-1-13)T

02. Department. Idaho Department of Commerce. (8-1-13)T

03. Grantee Business. A non-governmental company or organization that receives funding through a Company Performance Agreement. (8-1-13)T

04. Local Government Grant Agreement. An agreement between the Department and one (1) or more local governments. (8-1-13)T

06. Public Cost. Any cost incurred by the state of Idaho or local government of the state of Idaho for the purpose of promoting economic development to retain, expand, or attract quality jobs in industries deemed vital to the health of the local and statewide economy. Public costs do not include impact fees or easements. (8-1-13)T

014. GRANT AWARDS.

01. Funding. The Director of the Department may, in his sole discretion, award Opportunity Fund grants to local government for public costs incurred with the purpose to retain, expand or attract jobs which shall include: (8-1-13)T

a. Construction of or improvements to new or existing water, sewer, gas or electric utility systems for new or existing buildings to be used for industrial or commercial operations; (8-1-13)T

b. Flood zone or environmental hazard mitigation; or (8-1-13)T

c. Construction, upgrade or renovation of other infrastructure related items including, but not limited to, railroads, broadband, parking lots, roads or other public costs that are directly related to specific job creation or expansion projects. (8-1-13)T

02. Local Match. The local government must provide allowable local match. Allowable match includes those costs which are allowable within the Opportunity Fund and must be provided by the local government as cash, in-kind services, fee waivers (such as development impact fees), donation of assets, the provision of infrastructure or a combination thereof. The match must represent a material commitment from the local government that is commensurate with the local government's financial condition. The Director of the Department has the authority to approve other forms of local match or waive the local match requirements. (8-1-13)T

03. Local Government Grant Agreements. Local Government Grant Agreements will be entered into between the Department and one (1) or more local governments, and shall contain the following provisions: (8-1-13)T

a. A commitment on the part of the local government to match, in whole or in part, the funds allocated by the Department; (8-1-13)T

b. A provision requiring the local government to recapture any funds to which the local government is entitled under the Company Performance Agreement; (8-1-13)T

c. A provision requiring repayment from the local government to the Department for any funds used for unapproved purposes or disbursed prior to compliance with the Company Performance Agreement or achievement of the job creation or other performance targets; (8-1-13)T

d. A provision allowing the Department access to records possessed by the local government necessary to ensure compliance with the Company Performance Agreement and with the requirements of the Opportunity Fund; (8-1-13)T

e. A provision establishing a schedule for the disbursement of funds from the Opportunity Fund to the local government that reflects the disbursement schedule established in the Company Performance Agreement; and (8-1-13)T

f. Any other lawful provision the Department deems necessary to ensure the proper use of state funds. (8-1-13)T

04. Company Performance Agreements. Company Performance Agreements will be entered into between one (1) or more local governments and a Grantee Business, and may contain the following provisions: (8-1-13)T

a. A commitment to create or retain a specified number of jobs within a specified salary range at a specific location; (8-1-13)T

b. A commitment regarding the time period in which the jobs will be created or retained and the minimum time period for which the jobs must be maintained; (8-1-13)T

c. A commitment to complete the construction related to the agreed upon capital expenditures; (8-1-13)T

d. A provision that a reasonable percentage of the total amount of the grant be withheld until specified performance targets are met; (8-1-13)T

e. A provision that a reasonable percentage of the total amount of the grant be withheld until the specified number of jobs are maintained for a specified period of time; (8-1-13)T

f. A commitment to provide proof satisfactory to the local government and the Department of new jobs created or existing jobs retained and the salary level of those jobs; (8-1-13)T

g. A provision that funds received under the Company Performance Agreement may be used only for a purpose as authorized by the Opportunity Fund; (8-1-13)T

h. A provision allowing the Department or the local government to inspect the records of the Grantee Business as required to confirm compliance with the Company Performance Agreement or with the requirements of the Opportunity Fund. The provision shall limit the access of the Department and/or local government to only those records of the Grantee Business that are necessary to ensure compliance; (8-1-13)T

i. A provision establishing the method for determining compliance with the Company Performance Agreement; (8-1-13)T

j. A provision establishing a schedule for disbursement of funds under the Company Performance Agreement that allows disbursement of funds only in proportion to the amount of performance completed under the Company Performance Agreement; (8-1-13)T

k. A provision requiring repayment of grant funds and corresponding terms for repayment, if applicable, in the event a Grantee Business subsequently fails to comply with the terms of the Company Performance Agreement; (8-1-13)T

l. A provision that any repayments of grant funds required if the performance targets are not achieved

may be prorated to reflect a partial attainment of job creation or other performance targets; and (8-1-13)T

m. Any other lawful provision the Department or the local government finds necessary to ensure the proper use of state or local funds. (8-1-13)T

05. Disbursements. Funds will be disbursed from the Opportunity Fund to the local government as defined in the Local Government Grant Agreement and after the local government has demonstrated that the Grantee Business has complied with the terms of the Company Performance Agreement. (8-1-13)T

06. Award Amounts. The amount of each grant shall be determined by the Director, in his sole discretion. (8-1-13)T

016. REPORTING.

01. Quarterly. The Director of the Department shall report to the Economic Advisory Council quarterly on the grant activity and performance. (8-1-13)T

02. Annually. The Director of the Department shall publish an annual report regarding the state of the Opportunity Fund no later than September 30 each year. The report shall contain information on the commitment of funds, disbursement and use of the funds, the number of jobs committed and created, the total capital expenditures resulting from grant funds and the median wage of total jobs created. The annual report will be made available to the Governor, the Joint Finance-Appropriations Committee and the public. (8-1-13)T

017. -- 999. (RESERVED)

IDAPA 28 - DEPARTMENT OF COMMERCE

28.03.04 - RULES OF THE BUSINESS AND JOBS DEVELOPMENT GRANT FUND

DOCKET NO. 28-0304-1301 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 1, 2013.

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 67-4733, Idaho Code, and Sections 67-4732 through 67-4736, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 18, 2013.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 grants issued through the Business & Jobs Development Fund provide funding to Idaho cities and counties for infrastructure development to support the retention of existing businesses and recruitment of new businesses to the state. In compliance with House Bill 100, the Department has adopted a new temporary rule, which is promulgated under Docket No. 28-0301-1301 and published in this Bulletin, to replace this program. The new chapter, IDAPA 28.03.01, "Idaho Opportunity Fund," provides the same funding with new and additional parameters. Therefore, this chapter is repealed in its entirety.

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

In compliance with House Bill 100 this rule is being repealed in its entirety and replaced by a new temporary rule that is being promulgated in this Bulletin under Docket No. 28-0301-1301.

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

No fees or charges are being imposed as a result of 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:

There is no negative fiscal impact to the general fund. A \$400,000 ongoing appropriation in Department of Commerce budget (General Fund) that was available to the Department for Business & Jobs Development Fund grants is now available to the Department under the new Idaho Opportunity Fund per changes made to the department's budget for FY2014.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the need to adopt a temporary 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: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Megan Ronk, Chief Communications & Governmental Affairs Officer, Idaho Department of Commerce at (208) 334-2470.

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 September 25, 2013.

DATED this 31st day of July, 2013.

Megan Ronk
Chief Communications & Governmental Affairs Officer
Idaho Department of Commerce
700 W State Street
Boise, ID 83702
Phone: 208-334-2470
Fax: 208-334-2631

IDAPA 28.03.04 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 34 - SECRETARY OF STATE

34.06.01 - RULES GOVERNING THE ELECTRONIC RECORDING OF REAL PROPERTY

DOCKET NO. 34-0601-1301 (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 2014 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 67-903(9), Idaho Code.

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

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the July 3, 2013 Idaho Administrative Bulletin, [Vol. 13-7, pages 80 through 86](#).

FISCAL IMPACT: The following is a specific 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 Jeff Harvey, UCC Supervisor, at (208) 332-2849.

DATED this 6th day of August, 2013.

Jeff Harvey
UCC Supervisor
Office of the Secretary of State
700 W. State St.
P. O. Box 83720
Boise, ID 83720-0080
Phone: (208) 332-2849
Fax: (208) 334-2282

DOCKET NO. 34-0601-1301 - 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 13-7, July 3, 2013, pages 80 through 86](#).

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2014 Idaho State Legislature for final adoption.

IDAPA 35 - STATE TAX COMMISSION

35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-1302

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Sections 67-5220, Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Sections 67-5221(1) and 63-105A, Idaho Code.

METHOD OF PARTICIPATION: Interested persons wishing to participate in the negotiated rulemaking must respond to this notice by contacting the undersigned either in writing, by email, or by calling the phone number listed below. To participate, responses must be received by **September 25, 2013**.

Should a reasonable number of persons respond to this notice, negotiated meetings will be scheduled and all scheduled meetings shall be posted and made accessible on the agency website at <http://tax.idaho.gov/>.

Upon conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusions reached during the negotiated rulemaking will be addressed in a written summary and made available on the agency website at <http://tax.idaho.gov/>.

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.

Persons wishing to participate in the negotiated rulemaking may do any of the following:

1. Attend the negotiated rulemaking meeting (if scheduled) and participate in the negotiation process;
2. Attend through a teleconference;
3. Provide oral or written recommendations, or both, at the negotiated rulemaking meeting (if scheduled); and/or
4. Submit written recommendations and comments to the address below.

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

Property Tax Rule 205 is being amended to clarify, by listing examples, that certain properties are improvements (buildings and structures) and real property, and therefore should not be eligible for the personal property exemption provided for in 63-602KK. The rule lists cell towers, underground storage tanks, poles and towers, signposts, pipelines and conduit and railroad track as examples of improvements that are not eligible for the personal property exemption.

Property Tax Rule 902 is modified to delete the requirement to issue tax notices for those accounts that have zero balances due to the personal property exemption granted by Section 63-602KK.

Property Tax Rule 020 is being amended to update the method used to value the recreational vehicle (living quarters) portion of a combined use vehicle.

Property Tax Rule 407 is being amended to restructure the hearing process to create a more summary and simple hearing, moving to a less adversarial process by adopting a more presentational process.

Property Tax Rule 626 is being amended to give guidance to the Tax Commission, county assessors, clerks, and companies on how to report exempt personal property for operating property and locally assessed property. It also gives instruction for adjusting the amounts on the personal property tax reduction list.

Property Tax Rule 632 is being amended to define oil and gas wells, and explains which property is eligible and ineligible for the exemption.

Property Tax Rule 804 is being amended to clarify the procedures to be followed in the levy of property taxes within taxing districts which are home to urban renewal revenue allocation areas.

Property Tax Rule 803 is being amended to add a paragraph (Budget Certification) a provision stating that the levy approved by the tax commission shall not exceed the amount shown in the notice of budget hearing.

CONTACT INFORMATION, WEB ADDRESS, ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this negotiated rulemaking, contact Alan Dornfest at (208) 334-7742. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the commission's web site at <http://tax.idaho.gov/>.

All written comments must be directed to the undersigned and must be delivered on or before September 25, 2013.

DATED this 8th day of August, 2013.

Alan Dornfest
Tax Policy Supervisor
State Tax Commission
P.O. Box 36
Boise, ID 83722-0410
(208) 334-7742

IDAPA 35 - STATE TAX COMMISSION

35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-1303

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Sections 67-5220, Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Sections 67-5221(1) and 63-105A, Idaho Code.

METHOD OF PARTICIPATION: Interested persons wishing to participate in the negotiated rulemaking must respond to this notice by contacting the undersigned either in writing, by email, or by calling the phone number listed below. To participate, responses must be received by **September 25, 2013**.

Should a reasonable number of persons respond to this notice, negotiated meetings will be scheduled and all scheduled meetings shall be posted and made accessible on the agency website at <http://tax.idaho.gov/>.

Upon conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusions reached during the negotiated rulemaking will be addressed in a written summary and made available on the agency website at <http://tax.idaho.gov/>.

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.

Persons wishing to participate in the negotiated rulemaking may do any of the following:

1. Attend the negotiated rulemaking meeting (if scheduled) and participate in the negotiation process;
2. Attend through a teleconference;
3. Provide oral or written recommendations, or both, at the negotiated rulemaking meeting (if scheduled); and/or
4. Submit written recommendations and comments to the address below.

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

Property Tax Rule 406 - Rules Pertaining to Market Value of Operating Property of Rate Regulated Electric Utility Companies. This rule is a new rule to amend the inputs used by the state tax commission in determining market value of operating property of electric rate regulated utility companies.

CONTACT INFORMATION, WEB ADDRESS, ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this negotiated rulemaking, contact Alan Dornfest at (208) 334-7742. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the commission's web site at <http://tax.idaho.gov/>. All written comments must be directed to the undersigned and must be delivered on or before September 25, 2013.

DATED this 8th day of August, 2013.

Alan Dornfest
Tax Policy Supervisor
State Tax Commission
P.O. Box 36
Boise, ID 83722-0410
(208) 334-7742

IDAPA 35 - STATE TAX COMMISSION

35.01.05 - MOTOR FUELS TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0105-1301

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 67-5221(1), 63-105, and 63-2427, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 18, 2013.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 110, 115, and 290, as stated in the Notice of Intent To Promulgate Rules - Negotiated Rulemaking and published in the May 1, 2013, Administrative Bulletin, are not being promulgated and will remain as codified.

Motor Fuels Tax Rule 105 is being amended consistent with House Bill 20 which allows the Tax Commission to sell gaseous fuel decals. Also, changes to clarify records required for exempt sales at manned and unmanned pumps. This rule will be renumbered Motor Fuel Rule 132.

Motor Fuels Tax Rule 270 is being changed to clarify the records required for taxable and nontaxable use from a single storage tank when using the proration percentages provided in subsection (6)(a) or alternate percentages. The proration percentage provided will be reviewed.

Motor Fuels Tax Rule 292 is being reviewed to determine if changes are required to the standard allowances for special fuels power take off (PTO). The review is required due to increased efficiency of special fuels engines.

Motor Fuels Tax Rule 410 is changed to cite the external source according to the Administrative Procedures Act.

Motor Fuels Tax Rule 510 is changed to clarify when motor oils, other than new motor oils, are received in the state and subject to the transfer fee.

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 on all rules except Motor Fuel Tax Rule 410. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 1, 2013 Idaho Administrative Bulletin, [Vol. 13-5, pages 101 and 102](#).

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:

Section 63-2442A, Idaho Code, adopts the IFTA Agreement. Motor Fuel Tax Rule 410 previously incorporated the governing documents of the International Fuel Tax Agreement, but did not follow the external source citation requirements of the Administrative Procedures Act.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Don Williams at (208) 334-7855.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 25, 2013.

DATED this 30th day of August 2013.

Don Williams
Tax Policy Specialist
State Tax Commission
P.O. Box 36
Boise, ID 83722-0410
(208) 334-7855
Don.williams@tax.idaho.gov
<http://tax.idaho.gov/>

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0105-1301

011. -- ~~104~~. (RESERVED)

[Section 105 is being moved and renumbered to Section 132]

~~106. — 109. (RESERVED)~~

(BREAK IN CONTINUITY OF SECTIONS)

~~105~~32. LICENSED GASEOUS FUELS DISTRIBUTOR'S REPORTS (RULE ~~105~~32).

01. Monthly Reports. Every licensed gaseous fuels distributor (distributor) shall file with the State Tax Commission a monthly tax report and supporting detailed schedules on forms prescribed by the State Tax Commission. Such reports shall contain a declaration by the person filing the report that the statements contained therein are true and are made under penalties of perjury. The report shall include the following information together with such other information as the State Tax Commission may require: ~~(7-1-99)~~()

- a.** The total taxable gallons of gaseous fuels delivered into the supply tank of registered motor vehicles; (3-30-07)
- b.** The taxable gallons after deduction of a two percent (2%) allowance. See Rule 140 of these rules; (4-5-00)
- c.** The tax computation; (7-1-99)
- d.** The bad debt amount, if any. (This credit or debit only applies to debt from fuels taxes that have been written off for income tax purposes in the distributor's records before December 1, 2007.) See Rule 140 of these rules; (4-2-08)
- e.** The gaseous fuels permit fees (Attach to the report the yellow copy of the receipt for each gaseous

fuels permit sold during that month); and (4-5-00)

f. The net tax due; (4-5-00)

g. A receipt schedule reporting the total number of taxable gallons of gaseous fuels sold must be attached to the distributor's report. (4-5-00)

02. Report Due and Payment Required. The report shall be due on or before the last day of the month following the month to which the report relates together with the payment of any tax, annual gaseous fuels permit fees, penalty or interest due. See Rule 010 of these rules relating to method of payment and requirement for payments of one hundred thousand dollars (\$100,000) or more. (7-1-99)

03. Failure to Pay Tax and Permit Fees. Any ~~gaseous fuels~~ distributor required to pay the tax or permit fee imposed by Section 63-2424, Idaho Code, who fails to pay such tax or permit fee shall be liable to the State Tax Commission for the amount of tax or permit fee not paid plus any applicable penalty or interest. The State Tax Commission may collect such amounts in the manner provided in Section 63-2434, Idaho Code. ~~(4-2-08)~~()

04. Receipt of Gaseous Fuels. The special fuels tax is not imposed on gaseous fuels when the fuels are received in Idaho. Propane and natural gas are presumed to be tax-exempt fuels unless delivered into the main supply tank of a registered, or required to be registered, motor vehicle. ~~(4-5-00)~~()

~~05. Gaseous Fuels. Propane and natural gas are presumed to be tax-exempt fuels unless delivered into the supply tank of a registered, or required to be registered, motor vehicle. (3-30-07)~~

06. Annual Fees for Gaseous Fuels Permits. Persons operating vehicles powered by gaseous fuels may pay an annual fee for a gaseous fuels permit instead of paying the special fuel taxes at the time propane or natural gas is purchased. ~~Gaseous fuels d~~Distributors who sell these permits shall issue a permit that will be in the form of a decal to be displayed in a conspicuous spot visible from the outside of the permitted vehicle. The fees for gaseous fuels permits are based on the gross vehicle weight of the vehicles and are set by Rule 115 of these rules as is mandated by Section 63-2424(2), Idaho Code. The gaseous fuels permit is valid for the annual permit period of July 1 through June 30 of the following year. The annual permit period displayed on the decal will be the year in which the decal expires. ~~(4-5-00)~~()

07. Documentation of ~~Untaxed~~ Exempt Sales of Gaseous Fuels Delivered into Motor Vehicles. Gaseous fuels delivered into the fuel supply tank of a registered, or required to be registered, motor vehicle are taxable except for: ~~(3-30-07)~~()

a. Government. Gaseous fuels used by vehicles owned or leased, and operated by the federal government, or by an instrumentality of the state of Idaho, including all of its political subdivisions, are exempt from the special fuels tax on gaseous fuels. In this case, the ~~licensed~~ distributor must record ~~on the document of sale,~~ the name of the governmental entity, the license or identification number, and the type of vehicle on the sales document. ~~(7-1-99)~~()

b. Gaseous Fuels Decal. Gaseous fuels dispensed into the fuel supply tank of a motor vehicle displaying a valid Gaseous Fuels Decal are exempt from tax. For the exempt status to be valid, the distributor must record the purchaser's name, address, vehicle license number, and the words "gaseous fuels decal" must be recorded or the decal number on the sales document. ~~(4-5-00)~~()

c. Manned and Unmanned Stations. A manned station must have a representative at the point of sale to visually inspect the vehicle, including the decal when required, in order to make exempt sales of gaseous fuels. Exempt sales of gaseous fuel from an unmanned station are allowed when each sale is recorded by other visual means. When a distributor cannot meet the previous two requirements, it must request approval from the State Tax Commission before making exempt sales of gaseous fuels. ()

08. Completion of Gaseous Fuels Receipt Book(s). The following information is required to be recorded by a gaseous fuels distributor in his gaseous fuels receipt book for each gaseous fuels permit (decal) sold: (4-5-00)

- a. The date; (4-5-00)
- b. The amount; (4-5-00)
- c. One (1) of the following weight classes: (4-5-00)
 - i. Zero - eight thousand pounds (0 - 8,000 lbs.); or (4-5-00)
 - ii. Eight thousand one - sixteen thousand pounds (8,001 - 16,000 lbs.); or (4-5-00)
 - iii. Sixteen thousand one - twenty-six thousand pounds (16,001 - 26,000 lbs.); or (4-5-00)
 - iv. Twenty-six thousand one pounds (26,001 lbs.) and over. (4-5-00)
- d. The current month; (4-5-00)
- e. The annual permit period; (4-5-00)
- f. The customer's name and vehicle license plate number; (4-5-00)
- g. The name and license number of the gaseous fuels distributor who is selling the permit; and (4-5-00)
- h. The signature of the salesperson. (4-5-00)

098. Annual Reconciliation of Gaseous Fuels Receipt Books and Decals. A distributor who sells gaseous fuels permits must reconcile its account with the State Tax Commission for the annual permit period ending June 30, by July 31, of the same year. Distributors may begin ordering decals and receipt books in May for the upcoming annual permit period. The following is required to be received by the State Tax Commission for reconciliation: (4-5-00)

- a. All unused/unsold gaseous fuels decals; (4-5-00)
- b. All voided receipts (white and yellow copies) not previously submitted with the distributor report; (4-5-00)
- c. All receipt books (pink copies must be intact); and (4-5-00)
- d. A completed gaseous fuels reconciliation form which includes: (4-5-00)
 - i. The number of decals ordered for the annual permit period; (4-5-00)
 - ii. The number of decals sold for the annual permit period; (4-5-00)
 - iii. The balance of decals at the end of the annual permit period; and (4-5-00)
 - iv. The number, if any, of decals lost or destroyed. If decals are lost or destroyed, a statement describing the circumstances of the loss or destruction must accompany the distributor's gaseous fuels permit reconciliation. (4-5-00)

109. Assessment for Unaccounted for Decals. ~~Two hundred and eight dollars (\$208)~~ An amount equal to the annual fee of the highest weight class will be assessed for each decal not accounted for during the annual reconciliation, unless there is clear and convincing evidence the decal was destroyed or mutilated. (4-5-00)()

10. Sales of Gaseous Fuels Decals by The State Tax Commission. The State Tax Commission may act as a seller of gaseous fuels decals. The State Tax Commission will maintain records and report sales of decals in a

manner sufficient to reconcile its accounts. ()

1323. -- 134. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

270. REFUND CLAIMS -- DOCUMENTATION (RULE 270).

01. Refunds to Consumers. Any buyer of motor fuels, claiming a refund under Chapter 24, Title 63, Idaho Code, must retain in his records the original invoices from the seller, showing the number of gallons purchased. All invoices, except those prepared by a computer or similar machine, shall be prepared in ink or a double-faced carbon must be used between the original and first duplicate. Only one (1) original invoice may be issued for each delivery. Each invoice must contain or show the following, in addition to the requirements outlined above: (4-11-06)

- a. A preprinted identification number; (4-11-06)
- b. Name and address of seller; (7-1-98)
- c. Name of purchaser; (7-1-98)
- d. Date of delivery; (7-1-98)
- e. Type of motor fuel; (7-1-98)
- f. Gallons invoiced; (7-1-98)
- g. Price per gallon; (7-1-98)
- h. At least one (1) of the following to establish that tax has been charged: (7-1-98)
 - i. The amount of Idaho state fuels tax; (7-1-98)
 - ii. The rate of Idaho state fuels tax; or (7-1-98)
 - iii. A statement that the Idaho state fuels tax is included in the price. (7-1-98)

02. Indian-Owned Retail Outlet. Motor fuels purchased after December 1, 2007, from an Indian-owned retail outlet do not include the Idaho motor fuels tax and do not qualify as an Idaho tax-paid purchase, unless otherwise provided in an agreement between the state and appropriate tribe under the authority of sections 63-2444 or 67-4002, Idaho Code. See definition of Indian-owned retail outlet in Rule 010 of these rules. (4-2-08)

03. Corrected Invoices. No altered or corrected invoice will be accepted for refund purposes. When errors occur, the original invoice must not be altered or corrected, but must be voided and a new original invoice issued. All altered or corrected invoices must be marked as voided and ~~retained by the seller for at least three (3) years from the date issued.~~ (7-1-98)()

04. Invoice Retention. ~~The~~ Original, altered, or corrected invoices required by ~~Subsection 270.01 of~~ this rule shall be retained for the greater of either three (3) years or the time during which the taxpayer's Idaho income tax return is subject to adjustment by either the State Tax Commission or by voluntary action of the taxpayer. (7-1-98)()

05. Refund Documents. ~~For refund claims under Section 63-2410(5)(c), Idaho Code, a~~ An original invoice includes any duplicate of the original that is created with the same impression as the original, for example, with carbon paper or NCR paper, if the original is retained by the seller and only the duplicate is provided to the

customer. An original invoice does not include any document produced by a copy machine or similar device capable of producing a copy of an existing document. (7-1-98)()

06. Records Required for Motor Fuels Tax Refunds. Each claimant shall maintain records that are sufficient to prove the accuracy of the fuels tax refund claim. Such records shall include all motor fuels receipts, the gallons of tax-paid fuel used in each type of equipment, both taxable and nontaxable, and other uses. The records must show the date of receipt or disbursements and identify the equipment into which the tax-paid fuel is dispensed. Failure of the claimant to maintain the required records and to provide them for examination is a waiver of all rights to the refund. The following rules shall govern records maintained to support claims for refund. (4-11-06)

a. Use of Fuel from a Single Storage Tank. Idaho tax-paid fuel ~~(other than fuel purchased by persons who operate motor vehicles that are licensed under IFTA or by persons who operate non-IFTA motor vehicles who claim refunds for nontaxable uses of motor fuels in motor vehicles granted in Rule 290 and Rule 292 of these rules)~~ purchased and delivered into a single bulk storage tank and withdrawn for both ~~non~~taxable and nontaxable uses must be accounted for using either the proration provided by this paragraph or by records showing actual taxable and nontaxable usage. No refund is allowed under this paragraph for fuel purchased for use in: motor vehicles licensed under the authority of the International Fuel Tax Agreement (IFTA); non-IFTA motor vehicles for which a refund for nontaxable use is granted using either Rule 290 or 292 of these rules; or, for diesel when the claimant has both undyed (tax paid) and dyed (untaxed) diesel tanks. If the proration is used, sixty percent (60%) of all taxed diesel fuel or twenty five percent (25%) of all taxed gasoline delivered into bulk storage shall be presumed to be for exempt uses unless an alternate percentage is requested by the taxpayer and authorized by Taxpayers may claim a refund using a proration percentage instead of claiming actual use. †The State Tax Commission must authorize a taxpayer's proration percentage before he may receive a refund using any percentage when filing a refund claim. The authorization request shall itemize anticipated all taxable and nontaxable uses by vehicle and type of equipment based on previously experience or anticipated use. The State Tax Commission will refund fuel taxes paid included on Idaho tax-paid fuel for nontaxable use based on the an authorized percentage of taxed fuel presumed to be exempt which represents the claimant's reasonable nontaxable use. If refunds are claimed based on records of actual use, the records must be made available upon request. In either case, invoices showing the fuel purchases on which tax was paid must be retained to support each refund claim. The proration or another percentage granted by this paragraph cannot be used if you have separate storage tanks for undyed diesel and dyed diesel. When using an authorized percentage, certain records must be maintained and made available upon request. Acceptable records of refunds based on an authorized percentage include, but are not limited to: fuel purchase invoices and equipment lists. Equipment lists must be supported by documentation. Acceptable equipment list documentation includes, but is not limited to: ()

- i. Equipment purchase; ()
- ii. Sales or rental receipts; and ()
- iii. Depreciation schedules. (3-30-07)()

b. Use of Fuel from Multiple Storage Tanks. When a claimant maintains separate bulk storage tanks are maintained of Idaho tax-paid fuel for both exempt and taxable and nontaxable uses, the claimant must identify which storage tank is for taxable and which is for nontaxable use. The seller must mark the invoices at the time of delivery, identifying the storage tanks into which the fuel was delivered. Only Idaho tax-paid fuel placed in the nontaxable tank is refundable. Detailed withdrawal records will only be required if fuel ~~is purchased by persons who operate from these tanks are used in~~ motor vehicles that are licensed under IFTA or ~~by persons who operate in~~ non-IFTA motor vehicles ~~who claim refunds for which refunds are granted for~~ nontaxable uses of motor fuels in motor vehicles granted ~~in using either~~ Rule 290 ~~and or~~ Rule 292 of these rules. No refund may be claimed under this paragraph for diesel when the claimant has both undyed (tax-paid) and dyed (untaxed) diesel tanks. All fuel invoices must be retained as required by Subsection 270.03 of this rule. Exempt fuel may not be used in motor vehicles registered or required to be registered. (3-30-07)()

c. Use of Fuel for Other Than Bulk Storage. Idaho tax-paid †fuel dispensed into small containers for use in, or into the supply tank of, stationary engines, equipment, commercial motorboats, or vehicles other than registered motor vehicles, must be identified on the purchase invoice. No other records will be required. (3-30-07)()

07. **Untaxed Motor Fuel.** Under the provisions of Section 63-2421, Idaho Code, untaxed motor fuel may not be used in motor vehicles registered or required to be registered unless authorized elsewhere in these rules. Under the audit and enforcement provisions of Sections 63-2410 and 63-2434, Idaho Code, all fuel tax refund claims are subject to audit by the State Tax Commission and no part of these rules may be construed to imply that an audit may not be performed. Tax-paid motor fuel is no longer exempt from taxes imposed by Chapter 36, Title 63, when the motor fuel tax is refunded to the consumer according to Rule 171. ()

(BREAK IN CONTINUITY OF SECTIONS)

292. CALCULATION OF REFUNDS FOR NONTAXABLE USES OF MOTOR FUELS IN MOTOR VEHICLES. (RULE 292).

01. Fuel Records Required for Refund Claims. Special fuels users may be eligible for a fuels tax refund of tax-paid special fuels if their motor vehicles have accrued nontaxable miles or have power take-off (PTO) equipment. Records must be kept as described in Subsection 290.01 of these rules. (4-5-00)

02. Nontaxable Miles Defined. Nontaxable miles are miles driven on roads which are not open to the public, not maintained by a governmental entity, located on private property that are maintained by the property owner, or defined in Subsection 292.03 of this rule. Miles driven on a construction site would also be considered nontaxable miles and may be eligible for a special fuels tax refund. See Rule 171 of these rules regarding application of Idaho Sales and Use Taxes. (4-6-05)

03. Additional Nontaxable Roadways. Roadways defined in Section 63-2401, Idaho Code, include those constructed and maintained by the United States Forest Service, the United States Bureau of Land Management, the Idaho Department of Lands, or forest protective associations with which the state of Idaho has contracted or become a member pursuant to Chapter 1, Title 38, Idaho Code. The special fuels user must maintain records documenting nontaxable miles traveled on roadways that qualify for exclusion under this provision, unless using the “standard miles per gallon (MPG)” for its industry found in Subsection 290.02 of these rules. When special fuels users compute their special fuels tax liability or refund, they may exclude from total taxable miles traveled in Idaho the miles traveled on these roadways if the cost of maintaining the roadway pursuant to a contract or permit is primarily borne by them or if the special fuel user is a subcontractor of a prime contractor required by contract to bear the primary cost of maintaining the roadway. (3-15-02)()

04. Calculation. Determine the number of taxable miles driven in Idaho following the procedure established in Subsection 290.01 of these rules. Divide this number by the actual MPG, the presumed MPG established by Subsection 290.01 of these rules, or the industry standard MPG provided by Subsection 290.02 of these rules. Subtract this number of gallons from the total Idaho tax-paid gallons purchased for the subject vehicles. Motor fuels purchased after December 1, 2007, from an Indian-owned retail outlet do not include the Idaho motor fuels tax and do not qualify as an Idaho tax-paid purchase, unless otherwise provided in an agreement between the state and appropriate tribe under the authority of Sections 63-2444 or 67-4002, Idaho Code. See definition of Indian-owned retail outlet in Rule 010 of these rules. (4-2-08)

05. Power Take-Off (PTO) and Auxiliary Engine Allowances (Allowances). ~~Power take-off (PTO)~~ allowances are available for special fuels powered vehicles. Auxiliary engine allowances are available for both special fuels and gasoline-powered vehicles. (4-5-00)()

a. Standard Allowances for Special Fuels. Nontaxable gallons of special fuels may be claimed when special fuels are used for purposes other than to operate, propel, or idle, as defined in Section 63-2401, Idaho Code, a motor vehicle and the fuel is drawn from the main supply tank of the motor vehicle. Examples of uses that qualify for allowances are turning a vehicle-mounted cement mixer or off-loading product. (4-6-05)

b. Standard Allowances for Gasoline. Nontaxable gallons of gasoline may be claimed when gasoline is used in an auxiliary engine and the fuel is drawn from the main supply tank of the registered motor vehicle. No

claim for gasoline is allowed when gasoline is used by the registered motor vehicle's main engine even to operate the motor vehicle's PTO unit. (3-30-07)

c. Rates for Standard Allowances. The number of gallons of fuel actually delivered into the fuel tank of the vehicle may be reduced by the following allowances: (4-5-00)

i. Allowances based on unit quantities:

Allowance Type	Allowance Rates	x	Unit Quantities
Gasoline/fuel oil	0.00015 gallons	x	Gallons pumped
Bulk cement	0.1858 gallons	x	Tons pumped
Refrigeration unit/reefer	0.75 gallons	x	Hours unit operated
Tree length timber/logs	0.0503 gallons	x	Tons Hauled
Tree length timber/logs	3.46 gallons	x	Hours unit operated
Carpet cleaning	0.75 gallons	x	Hours unit operated
Concrete Pumping	0.142857 gallons	x	Yards pumped

(4-11-06)

ii. Allowances based on percentages:

Allowance Type	Percentage Per Gallon	x	Gallons Consumed
Concrete mixing	30%	x	Gallons consumed
Garbage compaction	25%	x	Gallons consumed

(3-15-02)

06. Nonstandard Allowances. A request for an allowance not listed in Subsection 292.05 of this rule, or greater than those listed must be submitted by the taxpayer to the State Tax Commission for approval before being used. Taxpayers must request approval of the proposed allowance in writing with a copy of the supporting calculations used to compute the proposed allowance. *Taxpayers must send requests for approval to:*

*FUELS TAX POLICY
IDAHO STATE TAX COMMISSION
P.O. BOX 36
BOISE, ID 83722-0410*

The ~~Idaho~~ State Tax Commission may request additional information or documentation as needed in order to make a determination on the request. (4-6-05)()

07. Nontaxable Gallons of Fuel Claimed by Non-IFTA Licensees. The nontaxable gallons of fuel claimed by non-International Fuel Tax Agreement (IFTA) licensees may be the allowance gallons listed in Subsections 292.05 and 292.06 of this rule and/or the gallons calculated under Subsection 292.04 of this rule. Only actual MPGs, computed by adjusting total fuel as defined in Subsection 290.01 of these rules by the allowance gallons, may be used to calculate a fuels tax refund based on both nontaxable miles and allowances. Fuels tax refunds based solely on an allowance may be calculated without regard to mileage and fuel consumption (MPG) information. (4-11-06)()

08. IFTA Licensees. An IFTA licensee may ~~Qualifying~~ for ~~Power Take-Off~~ standard or nonstandard

~~(PTO)~~ and auxiliary engine allowances ~~(Allowances)~~. ~~Allowances~~ listed in ~~Subsection 292.05~~ of this rule or ~~established as provided in Subsection 292.06 of this rule may be granted for IFTA licensees~~ authorized by request, by recomputing the total gallons of fuel consumed in all jurisdictions. IFTA licensees claiming refunds of Idaho fuels tax resulting from the allowances established in Subsections 292.05 and 292.06 of this rule, must file the claim on an Idaho Fuels Use Report Form 75 with the relevant supplemental worksheet. ~~(4-6-05)~~()

a. The IFTA licensee must recompute the total taxable fuel for Idaho by deducting the gallons determined by the allowances in all jurisdictions from the total number of gallons of fleet fuel consumed that was reported on the IFTA return. Using the new net gallons consumed, the IFTA licensee will recompute the new fleet miles per gallon MPG. ~~Apply~~ The new fleet miles per gallon MPG is applied to the reported Idaho taxable miles to calculate the corrected Idaho taxable gallons. To calculate the Idaho nontaxable gallons available for refund, the IFTA licensee must subtract the recomputed taxable gallons for Idaho from the original taxable gallons reported for Idaho. This nontaxable gallon figure is then entered on the line labeled nontaxable gallons on the Form 75. ~~(4-5-00)~~()

b. ~~Additionally,~~ a copy of the IFTA tax return for the period subject to the refund claim and a statement or worksheet showing how the allowance was calculated must be included as an attachment to the Form 75. All refund claims are subject to review and audit, therefore, adequate documentation must be retained by the licensee. ~~(4-5-00)~~()

c. IFTA licensees that must used an assumed actual MPG when preparing their original IFTA return may not to claim any additional refund. ~~(4-5-00)~~()

(BREAK IN CONTINUITY OF SECTIONS)

410. ADOPTION OF INTERNATIONAL FUEL TAX AGREEMENT (RULE 410).

Under the authority of Sections 63-2434, 63-3039, 67-5203, and 63-2442A, Idaho Code, the State Tax Commission and motor fuels users licensed or required to be licensed pursuant to the International Fuel Tax Agreement (IFTA), are governed by the provisions of the International Fuel Tax IFTA Articles of Agreement; (Agreement), Article I, Section R120 Governing Documents (revised January 1, 2013). This section is incorporated by reference, including ~~The IFTA Agreement~~, Procedures Manual and Audit Manuals in effect on the effective date of this rule and as subsequently amended are equally binding on all IFTA members jurisdictions and licensees. Motor fuels users who operate under the International Fuel Tax Agreement also an Idaho IFTA license must comply with all applicable rules contained in these rules. ~~(7-1-99)~~()

(BREAK IN CONTINUITY OF SECTIONS)

510. APPLICATION AND REPORTING OF THE PETROLEUM TRANSFER FEE (RULE 510).

01. Application. (6-23-94)

a. The Petroleum Transfer Fee applies to the first receipt of any petroleum or petroleum product within this state. The amount of the fee is one cent (\$0.01) for each gallon of petroleum or petroleum product received. The fee shall be paid by the distributor who receives any petroleum or petroleum product not excluded from the fee, unless the fee has previously been paid on the same petroleum or petroleum product. Only licensed Idaho fuel distributors may receive refunds or credits of the transfer fee. The refunds or credits must be claimed on the distributor report required in Section 63-2406, Idaho Code, according to Rule 180. ~~(7-1-99)~~()

b. The legal incidence of the fee is on the first distributor which receives any petroleum or petroleum product. This distributor is required to report and pay the transfer fee to the State Tax Commission. The fee is not required to be separately stated on any invoice, receipt, or other billing document. A choice to state separately the fee does not change its legal incidence or its nature. ~~(6-23-94)~~()

02. Receipt of Petroleum Products. Receipt of petroleum or petroleum products shall be determined according to Section 63-2403, Idaho Code. Receipt is determined by the movement of petroleum or petroleum products from permanent storage facility (terminal) or crossing the border of this state. Storage of petroleum or petroleum products is incidental to the movement of the petroleum or petroleum products. (7-1-99)()

03. Exemption to Application of the Transfer Fee. The Petroleum Transfer Fee does not apply to petroleum or petroleum products that are: (6-23-94)

a. Returned to the refinery or pipeline terminal. (6-23-94)

b. Exported from this state. No fuel will be considered exported, unless the distributor can prove the export by documentation required by Rule 140 of these rules. (7-1-99)

c. Received by a railroad or railroad corporation or any employee of them. Petroleum or petroleum products sold by a licensed distributor to a railroad or railroad corporation or any employee of them is subject to the Petroleum Transfer Fee unless the petroleum or petroleum products are "received" by the railroad or railroad corporation as defined in Section 63-2403, Idaho Code. The exclusion for railroad employees applies only when the activity relating to the fuel is part of their employment with the railroad or railroad corporation. (7-1-99)

d. Received in retail containers of fifty-five (55) gallons or less or petroleum products to be packaged or repackaged into retail containers of fifty-five (55) gallons or less, if such containers are intended to be transferred to the ultimate consumer of the petroleum or petroleum products. (6-23-94)

04. Casualty Loss and ~~Shrinkage~~ Two Percent (2%) Allowance Not Deductible. All petroleum and petroleum products received in this state that are not within an exemption or exclusion listed in this rule are subject to the fee, without further deductions or discounts despite the product's use. ~~The d~~ Deductions allowed to motor fuel distributors in Section 63-2407, Idaho Code, for fuel lost by fire or similar casualty; see Section 63-2407(3), Idaho Code; loss and the two percent (2%) discount for loss by shrinkage or evaporation, see Section 63-2407(4), Idaho Code; allowance are not deductions applicable to the Petroleum Transfer Fee. (4-2-08)()

05. Petroleum and Petroleum Products. The products subject to the Petroleum Transfer Fee are crude oil or any fraction of it that is liquid at a temperature of sixty (60) degrees Fahrenheit and a pressure of fourteen and seven tenths (14 7/10) psi. These products are all products refined from crude oil including but not limited to motor gasoline, alcohol blended fuels, such as E-10 and E-85, including the alcohol content of blended fuel, diesel fuel (#1 - #6), biodiesel blended fuels, such as B-20, including the biodiesel content of the blended fuel, heating oil, aviation fuel, naphtha, naphtha-type jet fuel, kerosene-type jet fuel (JP#1 - #8), motor oil, brake fluid, tractor fuel, distillate fuel oil, stove fuel, unfinished oils, turpentine substitutes, lamp fuel, diesel oils (#1 - #6), engine oils, railroad oils, kerosene, commercial solvents, lubricating oils, fuel oil, boiler fuel, refinery fuel, industrial fuel, bunker fuel, residual fuel oil, road oils, and transmission fluids. Ethanol (E00), natural gasoline, and biodiesel (B00) are also defined as petroleum and petroleum products that are subject to the Petroleum Transfer Fee. (4-7-11)

06. Exclusion of Petroleum and Petroleum Products on Which The Fee Has Previously Been Paid. Used oil as defined by 40 CFR Part 279 (July 1, 2000) is presumed to be comprised of petroleum or petroleum products on which the transfer fee has previously been paid when generated in Idaho. The distributor shall not report used oil generated in Idaho on the distributor report nor shall a distributor pay or receive a credit of the transfer fee on used oil generated in Idaho. When used oil is not generated in Idaho it is presumed to be subject to the transfer fee. The distributor must report and pay the transfer fee unless an exemption or exclusion applies. ()

067. Licensed Distributors and Limited Licenses. Any person holding a distributor's license issued by the State Tax Commission under Section 63-2427A, Idaho Code, is also licensed for the Petroleum Transfer Fee. No additional license is required. Any person who receives any petroleum or petroleum product in this state, but who is not a licensed distributor nor required to obtain a license under Section 63-2427A, Idaho Code, shall apply to the State Tax Commission for a limited license. The limited license is only for reporting the Petroleum Transfer Fee and is not a license for any purpose under Chapter 24, Title 63, Idaho Code. (7-1-99)

078. Reporting Requirements. (6-23-94)

a. Distributors licensed under Section 63-2427A, Idaho Code, shall report and pay the Petroleum Transfer Fee with the distributor's report required by Section 63-2406, Idaho Code. For fuel subject to the taxes imposed by Sections 63-2402 and 63-2408, Idaho Code, the Petroleum Transfer Fee shall be included in the report in which the distributor is required to report the tax on the same fuel. (5-3-03)

b. Persons holding a limited license shall file a monthly report with the State Tax Commission on forms prescribed by the State Tax Commission on or before the last day of the month following the month to which the report relates. (7-1-99)

c. The provisions of Rule 130 of these rules, apply to reports of the Petroleum Transfer Fee. (7-1-99)

~~089~~. Payment. (6-23-94)

a. Payment of the fee is due on the due date of the report. For method of payment, including required use of electronic funds transfer, see Rule 010 of these rules. (6-23-94)

b. Any partial payment or collection of amounts shown due or required to be shown due on a distributor's report, plus any additional amount of penalty or interest due, shall be allocated between the motor fuels tax and the Petroleum Transfer Fee in the same proportion that the liability for the tax and the fee bear to the total liability. (6-23-94)

~~09~~10. Incorporation of Other Relevant Rules. Section 41-4909, Idaho Code, incorporated by reference various provisions of the Income Tax Act, Chapter 30, Title 63, Idaho Code, to apply to the administration and enforcement of the Petroleum Transfer Fee. For applying and construing those sections as they apply to the Petroleum Transfer Fee, the Administration and Enforcement Rules relating to those sections of the Income Tax Act are adopted as part of these rules, as if set out in full. In addition, Administration and Enforcement Rule 110, (IDAPA 35.02.01.110) relating to requests for declaratory rulings, is adopted as part of these rules, as if set out in full. (4-6-05)

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.02.71 - RULES GOVERNING DRIVER'S LICENSE VIOLATION POINT SYSTEM

DOCKET NO. 39-0271-1301

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking procedures. The action is authorized pursuant to Section 40-312, 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 September 18, 2013.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 rule-making:

House Bill 274, 2013, has established a new program for Traffic Safety Education for use in local jurisdictions that would be offered to drivers receiving certain infraction violations who may elect to attend the program as an alternative to receiving violation points and insurance rating charges. It is necessary to amend the rule to accommodate this option. Also, ISP has requested the addition of certain moving violations to the list of convictions to eliminate discrepancies between ISTARs and ITD, which we fully support.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is being changed to comply with changes in statute and is not subject to negotiation.

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 Ed Pemble, Driver Services Manager, 332-7830.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 25, 2013.

DATED this 17th day of July, 2013.

Lori Garza
Office of Governmental Affairs
Idaho Transportation Department
3311 W State St, PO Box 7129
Boise ID 83707-1129
Phone: 208-334-8810
FAX: 208-332-4107
lori.garza@itd.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0271-1301

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 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. (~~4-4-13~~)()

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~~ the one 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~~ work zone will receive four (4) points. Driving convictions of other speeding violations will receive three (3) points. (~~4-4-13~~)()

06. Exemptions. No points will be assessed to an Idaho driving record for texting as defined per Section 49-1401A(2), Idaho Code, and Safety Restraint Use as defined per Sections 49-673(3) and (4), Idaho Code. ()

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)
49-605	Driving Upon Sidewalk	three (3)
49-606	Coasting Prohibited	two (2)
49-612	Obstruction To Driver's View Or Driving Mechanism	three (3)
49-614	Stopping When Traffic Obstructed	one (1)
49-615	Drivers To Exercise Due Care	three (3)
49-616	Driving Through Safety Zone Prohibited	two (2)
49-619	Slow Moving Vehicles	two (2)

Idaho Code	Convictions Reported by Court	Point Count
<u>49-623(4)</u>	<u>Authorized Emergency Or Police Vehicles</u>	<u>three (3)</u>
49-624	Duty Upon Approaching A Stationary Police Vehicle, Or <u>An</u> Emergency Vehicle Displaying Flashing Lights	three (3)
49-625	Operation Of Vehicles On Approach Of Authorized Emergency <u>Or</u> Police Vehicles	three (3)
<u>49-626</u>	<u>Following Fire Apparatus Prohibited</u>	<u>three (3)</u>
<u>49-627</u>	<u>Crossing Fire Hose</u>	<u>one(1)</u>
49-630	Drive On Right Side Of Road <u>way</u> - 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)
<u>49-639</u>	<u>Turning Out Of Slow Moving Vehicles</u>	<u>two (2)</u>
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)
<u>49-643</u>	<u>Highway Construction And Maintenance</u>	<u>three (3)</u>
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 Crossings <u>s</u>	four (4)
49-650	Failure to Allow Sufficient Undercarriage Clearance at Railroad Grade Crossing <u>Moving Heavy Equipment At Railroad Grade Crossings</u>	three (3)
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 <u>Work</u> Zone Speed Limits	three (3) <u>four (4)</u>
49-658	School Zone Speed Limit	three (3)

Idaho Code	Convictions Reported by Court	Point Count
<u>49-663</u>	<u>Restricted Use Of Neighborhood Electric Vehicles On Highways</u>	<u>two (2)</u>
<u>49-673(3)&(4)</u>	<u>Safety Restraint Use</u>	<u>Exempt</u>
49-702	Pedestrians' Right Of Way In Crosswalks	three (3)
<u>49-706</u>	<u>Blind And/Or Hearing Impaired Pedestrian Has Right-of-Way</u>	<u>three (3)</u>
<u>49-707</u>	<u>Pedestrians' Right-of-Way On Sidewalks</u>	<u>three (3)</u>
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)
<u>49-806</u>	<u>Lane Use Control Signals</u>	<u>three (3)</u>
49-807(2)	Stop Signs	three (3)
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)
49-1401A	Texting While Driving	Exempt
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)

(4-4-13)()

(BREAK IN CONTINUITY OF SECTIONS)

400. COMPLETION OF A DEFENSIVE DRIVING CLASS OR TRAFFIC SAFETY EDUCATION PROGRAM.

01. Removal of ~~Three~~ Points Upon Completion of Defensive Driving Class or Traffic Safety Education Program. Three (3) points may be removed from an Idaho driving record upon the driver's completion of an approved defensive driving class or points may be removed from an infraction upon the driver's completion of an approved traffic safety education program. ~~These~~ pPoints may only be removed from a driver's record once every three (3) years. This time restriction begins on the completion date of either a ~~driver's first~~ defensive driving class or traffic safety education program. (7-1-97)()

a. For completion of a defensive driving class, points are only removed from the violation point count total on the driving record. ()

b. For completion of a traffic safety education program as provided in Section 50-336, Idaho Code, points are removed from the conviction for which the traffic safety education program was taken. ()

02. Driving Conviction Cannot Be Removed. A driver may not remove a driving conviction from his record by attending a defensive driving class or a traffic safety education program. (~~7-1-97~~)()

03. Suspension for Excessive Points. Once the department has suspended a driver for excessive points, that driver may not waive the suspension action by attending a defensive driving class or traffic safety education program. (~~7-1-97~~)()

04. Driver May Not Reserve ~~Three~~ Point Reduction. When a driver completes a defensive driving class or traffic safety education program but has no violation points on his driver record, he may not reserve a ~~three~~ (~~3~~) point reduction for use on a future point-assessing violation. (~~7-1-97~~)()

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.12 - RULES GOVERNING SAFETY REQUIREMENTS OF OVERLEGAL PERMITS

DOCKET NO. 39-0312-1301

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2013.

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 Section 49-201, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 18, 2013.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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:

At the request of industry, we are proposing changes to amend lighting and signing requirements to provide greater flexibility. We are also addressing some housekeeping changes to provide clarity.

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 rule confers a benefit to the industry by providing for flashing as well as non-flashing lights and by standardizing signing dimension minimums for towing, oversize and escort vehicles. Limitations and restrictions on a size and/or length of vehicle combinations on color-coded routes have been specified for units traveling in a convoy.

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

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

NEGOTIATED RULE-MAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because industry has made specific requests regarding lighting and signing requirements. In particular, the use of flashing lights for increased safety.

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 Regina Phipps, Vehicle Size and Weight Specialist, 334-8418.

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 September 25, 2013.

DATED this 17th day of July, 2013.

Lori Garza
Office of Governmental Affairs
Idaho Transportation Department

3311 W State St, PO Box 7129, Boise ID 83707-1129
Phone – 208-334-8810 / FAX – 208-332-4107
lori.garza@itd.idaho.gov

THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 39-0312-1301

100. LIGHTING REQUIREMENTS FOR OVERSIZE VEHICLES AND/OR LOADS TRAVELING AFTER DARK.

Those overdimensional vehicles and/or loads traveling during hours of darkness shall be required to display lights to mark the extremities of the vehicle and/or load, and shall be in addition to those clearance lights required on legal size vehicles when traveling at night. (4-5-00)

01. Standards for Lights on Oversize Vehicles and/or Loads. (4-5-00)

a. Lights are only required on those vehicles traveling after dark. (dark is defined as one-half (1/2) hour after sunset to one-half (1/2) hour before sunrise). (4-5-00)

b. The lights must be visible from a minimum of five hundred (500) feet. (4-5-00)

c. The lights ~~shall~~ may be flashing or steady burning. ~~(4-5-00)~~(7-1-13)T

d. The color of the lights shall be as follows: (4-5-00)

i. Lights visible from the front of the oversized vehicle and/or loads and the extremities in the middle or near the front of the oversized vehicle and/or load shall be amber. ~~(4-5-00)~~(7-1-13)T

ii. Lights visible from the back of the oversized vehicle and/or load and the extremities near the back of the oversized vehicle and/or load shall be red. ~~(4-5-00)~~(7-1-13)T

02. Standards for Lights on Rear Overhang. Lights are required when rear overhang exceeds the end of the trailer by four (4) feet or more. (4-5-00)

a. If the overhang is two (2) feet wide or less only one (1) light is required on the end of the overhang. (4-5-00)

b. If the overhang is over two (2) feet wide, two (2) lights are required on the end of the overhang to show the maximum width of the overhang. (4-5-00)

~~**03. Standards for Warning Lights on Towing Vehicle.** Amber flashing lights displayed on a towing vehicle operating at night, shall be mounted above the cab and meet the following: Rotating or flashing beacon visible from a minimum of five hundred (500) feet. (4-5-00)~~

101. -- 199. (RESERVED)

200. FLAGGING REQUIREMENTS FOR OVERSIZE VEHICLES AND/OR LOADS.

Warning flags for oversize vehicles and/or loads, excluding extra-length vehicle combinations, shall be marked by warning flags meeting the following: (4-5-00)

01. Warning Flags. Warning flags are required on all overwidth vehicles and/or loads and when the rear overhang exceeds the end of the trailer by four (4) feet or more. (4-5-00)

02. Size. Minimum size of flags is eighteen (18) inches by eighteen (18) inches. (3-29-10)

03. Color. Red or fluorescent orange. (4-5-00)

04. Placement of Flags. On overwidth vehicles and/or loads, flags shall be placed at the four (4) corners and/or extremities of the vehicle and/or load as follows: (4-5-00)

- a. Front. Fastened to each front corner of the oversized vehicle and/or load if it exceeds legal width. (4-5-00)(7-1-13)T
- b. Rear. Fastened to each rear corner of the oversized vehicle and/or load if it exceeds legal width. (4-5-00)(7-1-13)T
- c. Side. Fastened to mark any extremity, when extremity is wider than the front or the rear of the vehicle and/or load. (4-5-00)
- d. Overhang. If the overhang is two (2) feet wide or less only one (1) flag is required on the end of the overhang. If the overhang is over two (2) feet wide, two (2) flags are required on the end of the overhang to show the maximum width of the overhang. (4-5-00)

201. -- 299. (RESERVED)

300. **SIGNING REQUIREMENTS OF TOWING VEHICLES, OVERSIZE VEHICLES AND/OR LOADS.**
Oversize load signs shall meet the following specifications: (4-5-00)

01. **Dimensions.** ~~Eighteen~~ A minimum of twelve (12) inches high by ~~seven five~~ (75) feet wide, ~~letter height ten and eight~~ (108) inches high letters, ~~letter type standard series C~~, one (1) inch stroke width ~~one and five eighths~~ (1 5/8) inch, and black letters on yellow background. (4-5-00)(7-1-13)T

02. **Displaying Signs.** Signs shall be displayed on the front or the roof top of the towing vehicle and the rear of the oversize load. Shall be displayed on the front and back or the roof top of self propelled oversize vehicles. (4-2-08)

03. **When Signs Are Required.** Oversize load signs shall be required on all vehicles and/or loads exceeding legal width. Signs shall not be displayed when the vehicle is empty and of legal dimensions. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

500. **PILOT/ESCORT VEHICLE SIGN REQUIREMENTS.**

01. **Oversize Load Signs.** All pilot/escort vehicles while escorting and oversize load shall display a sign on the roof top of the vehicle having the words OVERSIZE LOAD. Such signs shall not be displayed and shall be considered illegal except when the pilot/escort vehicle is actually piloting/escorting an oversize load. (4-2-08)

02. **Dimensions.** ~~Ten~~ Twelve (12) inches high by five (5) feet wide, ~~type standard series B~~, and eight (8) inch high letters, one (1) inch stroke width, and black letters on yellow background. (4-5-00)(7-1-13)T

(BREAK IN CONTINUITY OF SECTIONS)

800. **PILOT/ESCORT VEHICLE PLACEMENT.**

01. **Front Pilot/Escort Vehicle.** The movement of an oversize vehicle and/or load ~~shall~~ may be preceded by a pilot/escort vehicle on those sections of highway where the vehicle and/or load cannot travel within its proper travelway lane. (4-5-00)(7-1-13)T

02. **Rear Pilot/Escort Vehicle.** As authorized by Section 49-940, Idaho Code, when the width of a load obstructs the driver's view to the rear ~~or when traffic control is required~~ so they cannot see two hundred (200) feet behind them, a rear escort shall be required to accompany the oversize load and to communicate with the driver of the permitted load concerning impeded overtaking traffic for the purpose of providing passing opportunity.

~~(4-5-00)~~(7-1-13)T

03. Advance Pilot/Escort Vehicle. A third pilot/escort vehicle may be required when the load is of such extreme dimensions for the route of travel as to require holding opposing traffic at turnouts and intersections to provide for passage of the load. (4-5-00)

04. First Movement from the Forest. A pilot/escort vehicle is not required on the first movement from the forest of tree-length logs or poles if the overall length does not exceed one hundred ten (110) feet. Secondary movements must comply with the requirements stated on the Pilot/Escort Vehicle and Travel Time Requirements map. (4-5-00)

05. Spacing. Approximately one thousand (1,000) feet shall be maintained in rural areas between the piloting/escorting vehicle and any oversize load. This spacing may be reduced in urban areas when necessary to provide traffic control for turning movements. (4-5-00)

801. -- 899. (RESERVED)

900. CONVOY OF OVERLEGAL LOADS.

01. Convoying Oversize Loads. Oversize loads which individually would require a pilot/escort vehicle, except overwidth manufactured homes, office trailers and modular buildings, may be permitted to travel in convoy with pilot/escort vehicles in front of and behind the convoy, but such convoys shall not exceed four (4) oversize loads or vehicles between pilot/escort vehicles. Maximum width of units in a convoy shall be limited to fourteen (14) feet ~~six (6) inches on the interstate system or~~ wide on black-coded routes of the Pilot/Escort Vehicle and Travel Time Requirements Map and to twelve (12) feet six (6) inches on red-coded routes of the Pilot/Escort Vehicle and Travel Time Requirements Map. Oversize loads which do not individually require a pilot/escort vehicle may travel in convoy without pilot/escort vehicles. Maximum length of units in a convoy shall be limited to one hundred (100) feet on ~~red-coded and~~ black-coded routes and seventy five (75) feet on red-coded routes of the pilot/escort vehicle and travel time requirements map and one hundred twenty (120) feet on the interstate system.

~~(4-2-08)~~(7-1-13)T

02. Convoying Manufactured Homes, Office Trailers, and Modular Buildings. No convoy of overwidth manufactured homes, modular buildings or office trailers shall include more than two (2) units ~~and between~~ two (2) piloting/escorting vehicles. On those routes where pilot/escort vehicles are required in front and to the rear of an overwidth manufactured home or office trailer, two (2) units may travel in convoy between such piloting/escorting vehicles. On routes requiring only a front pilot/escort vehicle, the manufactured home or office trailer mover may have the option of convoying two (2) units between front and rear pilots/escorts. At no time shall more than one (1) manufactured home or office trailer be piloted/escorted by one (1) pilot/escort vehicle. Maximum width of units in a convoy shall be limited to fourteen (14) feet wide on black-coded routes and to ten (10) feet wide on red-coded routes of the Pilot/Escort Vehicle and Travel Time Requirements Map. Minimum spacing of approximately one thousand (1000) feet shall be maintained between all units in a convoy except when a pilot/escort is required to control traffic in turning movements. Maximum length of units in a convoy shall be limited to one hundred (100) feet on black-coded routes and seventy five (75) feet on red-coded routes of the Pilot/Escort Vehicle and Travel Time Requirements Map and one hundred twenty (120) feet on the interstate system. ~~(4-2-08)~~(7-1-13)T

901. -- 949. (RESERVED)

950. PILOT/ESCORT VEHICLE AND TRAVEL TIME REQUIREMENTS MAP.

Color-coded maps on pilot/escort vehicle and travel time requirements for overwidth loads are available from the Headquarters Overlegal Permit Office, and Ports of Entry ~~and all Highway District offices~~ for the information of enforcement officers and the trucking industry. The routes chosen as depicted on the Map are based on ability of the road to carry the over-all maximum width of load (not just base width) and character of the route of travel.

~~(4-5-00)~~(7-1-13)T

IDAPA 46 - BOARD OF VETERINARY MEDICINE

46.01.01 - RULES OF THE STATE OF IDAHO BOARD OF VETERINARY MEDICINE

DOCKET NO. 46-0101-1301

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-2105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 18, 2013.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 a misstatement in the body of a rule; to add verbiage regarding functions that can be delegated to a veterinary technician under appropriate supervision consistent with a recent statutory change; to be more responsive to requests for copies of patient records; and to update and clarify certification provisions for certified euthanasia technicians.

This rulemaking is intended to make revisions in four (4) areas of Board rules. First, Rule 102 is being amended to correct a misstatement regarding the time period for completing continuing education by certified veterinary technicians. Second, Rule 103 is being revised to insert language authorizing a certified veterinary technician to dispense and deliver certain previously prescribed antibiotics and medications, under the indirect supervision of a veterinarian. Third, Rule 154.05 is being amended to provide a more realistic and meaningful time period (three business days) for veterinarians to respond to a request for records from an animal owner or another treating veterinarian. Finally, at the recommendation of the Certified Euthanasia Task Force, certain provisions in Rule 205 concerning the training and examination of certified euthanasia technicians are being modified to specify procedures, passing grades and clarification on certification processes.

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 rulemaking should have no fiscal impact on either the General Fund or the Board's dedicated 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 June 5, 2013 Idaho Administrative Bulletin, [Vol. 13-6, page 47](#).

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 Jodie Ellis, Executive Director, at (208) 332-8588.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 25, 2013.

DATED this 24th day of July, 2013.

Jodie Ellis
Executive Director
Board of Veterinary Medicine
2270 Old Penitentiary Rd.
P. O. Box 7249
Boise, ID 83707
Phone: (208) 332-8588
Fax: (208) 334-2170

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 46-0101-1301

102. CERTIFIED VETERINARY TECHNICIAN MANDATORY CONTINUING EDUCATION.

In order to best serve the citizens of Idaho and their animals, each certified veterinary technician shall be required to complete a minimum of fourteen (14) hours of ongoing continuing education in the field of veterinary technology in each and every two (2) year ~~certification~~ period following the date of his certification. A maximum of four (4) credit hours of continuing education in management may be used toward the fulfillment of the CE requirement. Approved courses, attendance period, content of report, exemptions, and credit for attendance are the same as outlined in Section 015 of these rules, mandatory continuing veterinary education with the exception of Subparagraph 015.03.d.i.(5) of these rules, which shall be the veterinary technician's signature, under penalty of perjury, and Subparagraph 015.03.b.iii. of these rules, which shall be a maximum of ten (10) hours credit for on-line or correspondence courses. No credit for attending approved courses in the field of veterinary technology shall be applicable to any reporting period other than that during which the credit is actually earned. ~~(3-30-07)~~()

103. SUPERVISING VETERINARIANS.

01. Statement of Purpose. Veterinarians licensed under the provisions of Title 54, Chapter 21, Idaho Code, shall be responsible for all temporary licensees and temporary certification holders, certified euthanasia technicians, certified veterinary technicians, veterinary assistants, or any others to whom they delegate the performance of acts pertaining to the practice of veterinary medicine. (3-29-10)

02. A Supervising Veterinarian Shall: (3-30-01)

a. Provide direct supervision for all procedures pertaining to the practice of veterinary medicine that are delegated to a certified veterinary technician, a veterinary technician working under a temporary certification, an assistant or any others with the exception of: (3-29-10)

i. Routine procedures in the practice of veterinary technology that include, but are not limited to, taking radiographs, weight and temperature, or as determined by the standard of practice for the area. These routine procedures may be performed under the indirect supervision of the veterinarian. (3-30-01)

ii. Previously prescribed antibiotics and medications, which may be administered, dispensed, and delivered under the indirect supervision of the veterinarian. Previously prescribed antibiotics and medications shall not include injectable controlled substances, injectable tranquilizers, injectable sedatives, and injectable or inhalant anesthetics, which may only be administered under the direct supervision of the veterinarian. ~~(3-30-01)~~()

iii. Emergency situations where the animal has been placed in a life-threatening condition and immediate treatment is necessary to sustain life. In these situations, in order to stabilize the animal, the veterinarian, while en route to the location of the distressed animal, may prescribe treatment and delegate appropriate procedures pertaining to the practice of veterinary medicine under indirect supervision. Such emergency treatment and procedures may only be continued under indirect supervision until the veterinarian arrives at the animal's location. (3-30-01)

- b.** Be available to supervise and direct all procedures pertaining to the practice of veterinary medicine that are delegated to others. (3-29-10)
- c.** Bear legal responsibility for the health, safety and welfare of the animal patient that the temporary licensee, temporary certification holder, certified veterinary technician, assistant, or any others serves. (3-29-10)
- d.** Not delegate an animal health care task to an unqualified individual. (3-30-01)
- e.** Make all decisions relating to the diagnosis, treatment, management, and future disposition of an animal patient. (3-30-01)
- f.** Have examined the animal patient prior to the delegation of any animal health care task to a certified veterinary technician, temporary certification holder, or assistant. The examination of the animal patient shall be conducted at such times as acceptable veterinary medical practice dictates, consistent with the particular delegated animal health care task. (3-30-01)
- g.** Diagnose and perform operative dentistry, oral surgery, and teeth extraction procedures. Operative dentistry and oral surgery are considered to be any dental procedure which invades the hard or soft oral tissue including, but not limited to, a procedure that alters the structure of one (1) or more teeth or repairs damaged and diseased teeth, or the deliberate extraction of one (1) or more teeth. Operative dentistry and oral surgery do not include, removal of calculus, soft deposits, plaque, stains, floating to shape the teeth, or smoothing, filing or polishing of tooth surfaces above the gum line. (3-30-01)

03. Limitations on Supervising Veterinarians. Unless otherwise provided by law or rule, a supervising veterinarian shall not authorize a certified veterinary technician, a veterinary technician working under a temporary certification, an assistant or anyone else, other than a licensed veterinarian or a veterinarian holding a valid temporary permit to perform the following functions: (3-29-10)

- a.** Surgery; (7-1-93)
- b.** Diagnosis and prognosis of animal disease; (7-1-93)
- c.** Prescribing drugs, medicines and appliances; or (3-30-01)
- d.** Diagnosis and performance of procedures that constitute operative dentistry/oral surgery as defined by Section 54-2103(13)(b), Idaho Code. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

154. RECORD KEEPING STANDARDS.

Every veterinarian shall maintain daily medical records of the animals treated. These records may be computerized and shall be readily retrievable to be inspected, duplicated, or submitted when requested by the Board. All records, including electronic records, shall be safeguarded against loss, defacement, tampering, and use by unauthorized personnel. If changes are made to any records (either hard-copy or electronic), the records must clearly reflect what the change is, who made the change, when the change was made, and why. In the case of electronic records, the veterinarian shall keep either a duplicate hard-copy record or a back-up electronic record. Records shall be maintained for a period of three (3) years following the last treatment or examination. Patient medical records shall be maintained for every animal accepted and treated as an individual patient by a veterinarian, or for every animal group (for example, herd, litter, and flock) treated by a veterinarian. (3-8-12)

- 01. Medical Records.** Medical records shall include, but not be limited to: (7-1-97)

 - a.** Name, address and phone number of the animal's owner or other caretaker. (7-1-97)

- b. Name and description, sex (if readily determinable), breed and age of animal; or description of group. (7-1-97)
- c. Dates (beginning and ending) of custody of the animal. (7-1-97)
- d. A short history of the animal's condition as it pertains to the animal's medical status. (7-1-97)
- e. Results and notation of examination, condition, and diagnosis suspected. (4-2-08)
- f. All medications, treatments, prescriptions or prophylaxis given, including amount, frequency, and route of administration for both inpatient and outpatient care. (3-29-10)
- g. Diagnostic and laboratory tests or techniques utilized, and results of each. (7-1-97)
- h. Written anesthesia records. (3-30-07)
- 02. Consent Forms.** Consent forms, signed by the patient's owner or other legal caretaker for each surgical or anesthesia procedure requiring hospitalization or euthanasia, shall be obtained, except in emergency situations, for each animal and shall be maintained on file with the practitioner. (3-30-07)
- 03. Postoperative Instructions.** Postoperative home-care instructions shall be provided in writing and be noted in the medical record. (3-30-07)
- 04. Treatment Records.** Veterinarians who practice with other veterinarians shall indicate by recognizable means on each patient's or animal group's medical record any treatment the veterinarian personally performed and which treatments and procedures were delegated to a technician or assistant to perform. (3-30-01)
- 05. Ownership of Medical Records.** Medical records are the personal property of the hospital or the proprietor of the practice that prepares them. Other veterinarians, including those providing subsequent health needs for a patient, and the patient's owner may receive ~~within fourteen (14) calendar days,~~ a copy or summary of the patient's medical record, upon the request of the patient's owner or other caretaker. ~~Vaccination +~~Records shall be supplied within ~~twenty-four (24) hours, unless the business is closed, in which case the records shall be provided within twenty-four (24) hours of resumption of business~~ three (3) business days, counting the day of the request if a business day. (3-8-12)()
- 06. Diagnostic Image Identification and Ownership.** All diagnostic images shall be labeled in the emulsion film or digitally imprinted to identify the veterinarian or premise, the patient, the owner, the date, and anatomical orientation. A diagnostic image is the physical property of the hospital or the proprietor of the practice that prepares it, and it shall be released upon the request of another veterinarian who has the authorization of the owner of the animal to whom it pertains or to the Board. Such diagnostic images shall be returned within a reasonable time to the veterinarian who originally ordered them to be prepared. (4-2-08)
- 07. Estimates.** A veterinarian shall make available to each client a written estimate on request. (3-30-07)
- 08. Controlled Substances and Prescription or Legend Drugs.** A controlled substance is any substance classified by the federal Food and Drug Administration or the Idaho Board of Pharmacy in Schedules I through V of the state or federal Controlled Substances Act, Title 37, Chapter 27, Idaho Code, or 21 CFR 1308. A prescription or legend drug is any drug that under federal law is required, prior to being dispensed or delivered, to be labeled with one (1) of the following statements: "Caution federal law prohibits dispensing without a prescription"; or "RX Only"; or "Caution: Federal law restricts this drug to used by or on the order of a licensed veterinarian"; or a drug which is required by any applicable federal or state law or regulation or rule to be dispensed on prescription only, or is restricted to use by practitioners only. A veterinarian shall only dispense or distribute a controlled substance or prescription or legend drug within the context of a valid veterinarian/client/patient relationship as defined by Section 150 of these rules. (3-30-01)

a. Records shall be kept that account for all dispensed and distributed controlled substances and prescription or legend drugs. The records shall comply with all federal and state laws. All information required by statute shall be recorded in the patient record along with the initials of the veterinarian who authorized the dispensing or distribution of the controlled substances or prescription or legend drugs. (3-30-01)

b. A separate inventory record shall be kept for each controlled substance by name and strength. The record shall include: (7-1-97)

i. Records of the receipt, which include all information required by federal law, the date of the receipt, the amount received, the source of receipt, and the invoice number. (7-1-97)

ii. Records of dispensing, which include the date the controlled substance was dispensed, the amount dispensed, the animal's name, identification of the patient record, identification of the person who dispensed the drug, identification of the veterinarian who supervised the dispensing and any other information required by federal law. (7-1-97)

c. Records for all dispensed or distributed prescription or legend drugs shall be maintained in the individual patient or herd record and shall include the date the drug was dispensed or distribution was authorized, the amount dispensed or distributed, identification of the person who dispensed or authorized distribution of the drug, identification of the veterinarian who supervised the dispensing and any other information required by federal or state law, regulation or rule. (3-30-01)

d. Prescription drug order means a lawful written or verbal order of a veterinarian for a drug. (3-30-01)

i. When prescription drug orders are issued by a licensed veterinarian to be distributed to the animal's owner or legal caretaker by a retail veterinary drug outlet, all orders for prescription or legend drugs shall be written on an official numbered three (3) part order form available through the Idaho Department of Agriculture. The veterinarian shall retain the second copy in his medical record and the original and one (1) copy shall be sent to the retail veterinary drug outlet. The retail veterinary drug outlet shall retain the original and attach the copy of the original to the order for delivery to the animal's owner or legal caretaker. (5-8-09)

ii. Under no circumstances shall a prescription or legend drug be distributed by a retail veterinary drug outlet to an animal's owner or legal caretaker prior to the issuance of either a written or oral prescription drug order from the veterinarian: (3-30-01)

(1) When a written prescription drug order from the veterinarian has been issued to a retail veterinary drug outlet, a copy of the veterinarian's original numbered prescription drug order shall be attached to the prescription or legend drugs that are delivered to the animal's owner or legal caretaker. (5-8-09)

(2) When a retail veterinary drug outlet receives an oral prescription drug order from the veterinarian, the oral order shall be promptly reduced to writing on a Department of Agriculture unnumbered telephone drug order blank. A copy of this completed form shall be attached to the prescription or legend drugs that are delivered to the animal(s)'s owner or legal caretaker. (5-8-09)

(3) When a veterinarian issues an oral prescription drug order to a retail veterinary drug outlet, the oral order shall be followed by a written prescription drug order signed by the veterinarian using the official numbered three (3) part order form and procedures required under Subparagraph 154.08.d.i. of these rules. The written order shall be sent promptly by the veterinarian so that it is received by the retail veterinary drug outlet no later than seven (7) days after the retail veterinary drug outlet receives the oral order. The written confirmation order may be hand-delivered, mailed, faxed, attached to an e-mail, or otherwise properly delivered to the retail veterinary drug outlet. (3-29-10)

e. When prescription or legend drugs are dispensed, the labeling on all containers shall be in compliance with the requirements of Paragraph 153.01.d. of these rules. (3-30-01)

f. When controlled substances are dispensed, all containers shall be properly labeled with: (4-5-00)

- i. The clinic's name, address, and phone number; (4-5-00)
- ii. The name of the client and patient; (3-30-01)
- iii. The drug name and quantity; and (3-30-01)
- iv. The directions for use, including dosage and quantity. (3-30-01)
- g.** All controlled substances shall be stored, dispensed, and disposed of in accordance with the requirements of the Uniform Controlled Substances Law and Code of Federal Regulations. (3-29-10)

09. Return or Disposal of Expired Pharmaceuticals and Biologicals. Except for controlled substances, which shall be disposed of in accordance with Paragraph 154.08.g. of these rules, all pharmaceuticals and biologicals that have exceeded their expiration date shall be removed from inventory and disposed of appropriately. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

205. CERTIFIED EUTHANASIA TECHNICIAN.

01. Training and Examinations. The CETF or the Board shall develop training sessions and materials that shall include, but not be limited to, the following topics: (3-30-01)

- a.** Euthanasia: (3-30-01)
 - i. The theory and history of euthanasia methods; (3-30-01)
 - ii. Animal anatomy; (3-30-01)
 - iii. Proper animal handling to ease trauma and stress; (3-30-01)
 - iv. Dosages of chemical agents, record keeping and documentation of usage, storage, handling, and disposal of out-dated drugs and their containers, instruments and equipment used in their administration in accordance with the Idaho Board of Pharmacy law and rules and the Code of Federal Regulations; (3-30-01)
 - v. Proper injection techniques; and (3-30-01)
 - vi. Proper use and handling of approved euthanasia drugs and equipment; (3-30-01)
 - vii. Examination. Following the euthanasia training, a written examination shall covering the training topics will be given. ~~Those passing the written examination will be eligible for the practical examination.~~ (3-30-01)()
- b.** Remote Chemical Capture: (3-30-01)
 - i. An overview of remote chemical capture; (3-30-01)
 - ii. Description and basic mechanism of action of approved drugs; (3-30-01)
 - iii. Laws, regulations and rules governing remote chemical capture; (3-30-01)
 - iv. Post-injection care; (3-30-01)

- v. Proper use and handling of approved restraint drugs and equipment; (3-30-01)
 - vi. Human safety; (3-30-01)
 - vii. Tactics and strategy; and (3-30-01)
 - viii. Delivery systems and equipment. (3-30-01)
- 02. Certification Standards.** Applicants for certification as a CET shall be eighteen (18) years of age or older and demonstrate proficiency in compliance with the following standards: (4-7-11)
- a.** Demonstrate competency in euthanasia techniques in the presence of a CETF or Board member, or a person approved by the Board: (4-4-13)
 - i. CETs are fully responsible for all actions that take place in the euthanasia area when an animal is brought to the area including, but not limited to, animal handling, use of the proper restraint technique, the proper drug dosage, and drug handling; (3-30-01)
 - ii. CETs shall be able to competently perform intravenous injections on dogs and intraperitoneal injections on both dogs and cats. Intravenous injections on cats shall not be required as part of the certification process, but when performed, shall meet the standards listed in Subparagraph 205.02.a.ii.(1) of these rules. Intracardiac injections on dogs and cats shall not be required as part of the certification process, but when performed, are restricted to the limitations listed in Subparagraph 205.02.a.ii.(3) of these rules. (4-4-13)
 - (1) Intravenous Injections: The CET shall be able to competently insert the needle into an animal's vein when an animal is injected by this method. A minimum of two (2) people shall be required for any IV injection. One (1) person shall be a CET and one (1) or more people shall be the handler. The handler does not need to be a CET, but the handler should be trained in human safety and animal handling techniques; (4-4-13)
 - (2) Intraperitoneal Injections: The CET shall be able to competently insert the needle into the proper area of the peritoneal cavity when an animal is injected by this method. It is recommended that animals injected by this method be placed into a cage or carrier with no other animals. The cage or carrier shall be covered with cloth or other material that can keep the injected animal isolated from the normal activities in the euthanasia area. Intraperitoneal injections may be administered by a CET without a handler. (4-4-13)
 - (3) Intracardiac Injections: Intracardiac injection shall be performed only on an anesthetized animal. CETs shall be able to competently insert the needle into the heart of an anesthetized animal, and intracardiac injections may be administered by a CET without a handler. (4-4-13)
 - iii. No other euthanasia injection procedures are permitted in any type of animal with the exception of intramuscular and subcutaneous injections for pre-euthanasia sedation; (4-4-13)
 - iv. Oral administration of approved euthanasia drugs is permitted for any animal that cannot be captured or restrained without serious danger to human safety; (4-4-13)
 - b.** Demonstrate proper record keeping. A record of all approved drugs received and used by the agency shall be kept. The record shall contain the following information: (3-30-01)
 - i. A weekly verification of the drug stock on hand, minus the amounts withdrawn for administration, signed by the CET responsible for security; (4-4-13)
 - ii. An entry of the date that a new bottle of any approved drug is opened and the volume of the bottle, signed by the CET responsible for security; (4-4-13)
 - iii. The species and approximate weight of each animal administered a drug; (3-30-01)
 - iv. The amount of the drug that was administered; (3-30-01)

- v. The date the drug was administered; (4-4-13)
 - vi. The signature of the CET who administered the drug; (3-30-01)
 - vii. A record of the amount of the drug wasted, if any, signed by the CET administering the drug and the CET responsible for security; and (4-4-13)
 - viii. A record of any disposal of expired or unwanted approved drugs, other chemical agent or the containers, instruments and equipment used in their administration, signed by the CET and disposed of in accordance with the Idaho Board of Pharmacy law and rules and the Code of Federal Regulations. (3-30-01)
- c.** Demonstrate understanding and concern for the needs and humane treatment of individual animals: (4-7-11)
- i. All animals shall be handled in a manner that minimizes stress to the animal and maximizes the personal safety of the CET and the handler. Each animal shall be handled with the least amount of restraint necessary, but human safety shall always be the primary concern. Handling includes all aspects of moving an animal from one (1) area to another; (4-7-11)
 - ii. The use of control sticks and other similar devices shall be limited to fractious or potentially dangerous animals; and (3-30-01)
 - iii. Animals shall not be placed in cages or kennels with other breeds or species that are incompatible with the animal in question. Animals shall not be overcrowded in a cage or kennel. (7-1-93)
- d.** Demonstrate ability to verify death. The animal should become unconscious and show terminal signs within sixty (60) minutes of drug administration. If any animal does not show any of these signs within the designated time period, the CET shall re-administer the drug. An animal that has received an approved drug orally may be injected with the same or another approved drug after it has become unconscious. Verification is the responsibility of the CET and shall be made by physical examination of the individual animal. One (1) of the following two (2) standards for death shall be met: (4-7-11)
- i. Rigor mortis; or (7-1-93)
 - ii. Complete lack of heartbeat (as checked with a stethoscope), complete lack of respiration, and complete lack of corneal and palpebral reflexes. (4-2-08)
- e.** Demonstrate ability to communicate with handlers during the euthanasia process. (3-18-99)

03. Certification. ()

a. An individual shall not be certified as a CET until such time as he has ~~demonstrated proficiency in the practical examination that shall be conducted following the successful passing~~ successfully passed all of the following: ()

i. A euthanasia written exam. Training courses and written and examination: ()

ii. A practical or clinical examinations will be given as needed. Certification and renewal training sessions and examinations will be conducted prior to July 1 of each year at a place selected by the CETF or the Board.; and (3-29-10)()

iii. An Idaho euthanasia jurisprudence examination. ()

b. The euthanasia written examination shall be the "written examination" referenced in Subparagraph 205.01.a.vii. of this rule. The practical examination shall test the individual's knowledge and skills in the hands-on application of euthanasia procedures and practices in a clinical setting under the direction of a CETF member, a

Board member, or a designee of either the CETF or Board. The Idaho euthanasia jurisprudence examination (which can either be a separate written test or combined with the euthanasia written examination) shall be an examination testing the individual's understanding of Idaho laws and Board rules addressing the practice of euthanasia. Both the euthanasia written examination and the euthanasia jurisprudence examination shall be developed by the Board, the CETF, or a designee of either the Board or the CETF. ()

c. A passing score for the euthanasia written examination shall be eighty percent (80%), or such other score as deemed appropriate by the Board or the CETF. A passing score for the euthanasia jurisprudence examination shall be ninety percent (90%), or such other score as deemed appropriate by the Board or the CETF. A failed euthanasia jurisprudence examination may be retaken multiple times upon making arrangements acceptable to the Board. ()

d. Initial certification and certification renewal training sessions and examinations will be conducted at least once per year prior to July 1, and at such other times deemed necessary by the CETF, the Board, or a designee of either the CETF or the Board. Upon approval of the Board, a CETF member, or the designee of either the Board or the CETF, an individual may take the euthanasia written examination, the practical examination, and the euthanasia jurisprudence examination in any order. ()

ae. An individual who has passed the written examination, but has not attended a training session and has not passed the practical examination, may serve as a probationary euthanasia technician under the direct supervision of a currently certified CET until such time as the next training course, practical examination and certification are conducted by a CETF ~~or~~ member, a Board member, or the designee of either the CETF or the Board. (3-30-07)()

bf. An individual who has not passed the written examination may not serve as a euthanasia technician. (4-7-11)()

eg. An individual who attends a training session and passes the written examination but fails the practical examination may serve on probation until ~~the CETF member he has been~~ re-examined ~~the individual~~. If the individual fails to pass the practical examination a second time and wishes to apply again, the individual shall attend the next regular training session and written examination. (3-30-01)()

eh. Upon termination from an agency as defined in Section 204 of these rules, a CET's certification immediately becomes invalid and the CET shall not perform animal euthanasia until employed by another certified euthanasia agency, at which time the certification may be reinstated. (4-7-11)

ei. The agency shall notify the Board office in writing within thirty (30) days from the date the CET's employment at that agency is terminated. (3-29-10)

fi. If a CET is employed again by a CEA prior to the expiration of his certification, the CEA employer may request reinstatement of the CET's certification. If a CET has not attended a euthanasia training in the three (3)-year period preceding recertification, the CET may not be recertified and will need to reapply for certification, at CETF discretion. (4-7-11)

gk. All certifications expire on July 1 of each year. (4-4-13)

04. Certification Renewal. (4-7-11)

a. Certifications may be renewed each year by payment of the annual renewal fee, provided that, every third year following the date of certification, the CET will need to attend a euthanasia training and pay the current training and certification fee prescribed by Section 014 of these rules. (4-7-11)

b. In addition to the above euthanasia training recertification requirement, CETs classified as law enforcement personnel who use chemical capture must recertify in remote chemical capture every third year following their original remote chemical capture certification. (4-7-11)

05. Duties. The duties of a CET shall include, but are not limited to: (7-1-97)

- a.** Preparing animals for euthanasia; (7-1-97)
- b.** Accurately recording the dosages for drugs that are administered and amounts for drugs wasted; (3-30-01)
- c.** Ordering supplies; (7-1-93)
- d.** Maintaining the security of all controlled substances and other approved drugs; (3-30-01)
- e.** Directly supervising probationary CET; (7-1-97)
- f.** Reporting to the Board violations or suspicions of a violation of these rules or any abuse of drugs; (3-30-01)
- g.** Humanely euthanizing animals; and (3-30-01)
- h.** Proper and lawful disposal of euthanized animals and expired or unwanted drugs, other chemical agent or the containers, instruments and equipment used in the administration of approved drugs. (3-30-01)

IDAPA 46 - BOARD OF VETERINARY MEDICINE

46.01.01 - RULES OF THE STATE OF IDAHO BOARD OF VETERINARY MEDICINE

DOCKET NO. 46-0101-1302

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-2105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 18, 2013.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 rules are silent on allowing continuing education credits for presenters and ambiguous regarding panel presentations. The rulemaking is intended to address these deficiencies. The rulemaking amends IDAPA 46.01.01.015 to authorize continuing education credits for course presenters and to clarify credit hours awarded for continuing education panel presentations.

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 rulemaking is simple in 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 Jodie Ellis, Executive Director, at (208) 332-8588.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 25, 2013.

DATED this 15th day of August, 2013.

Jodie Ellis
Executive Director
Board of Veterinary Medicine
2270 Old Penitentiary Rd.
P. O. Box 7249
Boise, ID 83707
Phone: (208) 332-8588
Fax: (208) 334-2170

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 46-0101-1302

015. MANDATORY CONTINUING VETERINARY EDUCATION.

01. Statement of Purpose. It is of primary importance to the public that veterinarians continue their veterinary education throughout the period of their active practice of veterinary medicine. These rules establish the minimum continuing veterinary education requirements necessary for veterinarians to maintain a license to engage in the practice of veterinary medicine in the state of Idaho. (7-1-97)

02. Approved Courses. (3-30-01)

a. Approved courses include: (3-30-01)

i. Those courses and providers listed on the American Association of Veterinary State Board's Continuing Education Registry; and (3-30-01)

ii. Those courses and providers approved by the Board. (3-30-01)

b. Board approval for a continuing education course may be obtained by sending a written request to the Board office and enclosing copies of the course agenda, dates, times, locations, and requested number of credit hours in management and veterinary medicine. Copies of the sign-in and sign-out sheets for each approved course are to be supplied to the Board office following completion of the course by the course provider. (3-30-01)

03. Education Requirements. (7-1-93)

a. Minimum Requirement. Each active veterinarian in the state of Idaho shall complete a minimum of twenty (20) credit hours of accredited continuing veterinary education activity in each and every two (2) year period following the date of his admission to the practice of veterinary medicine in this state. (3-30-07)

b. Credit Requirements. The following are the minimum and maximum credits that may be earned for each reporting period and the number of credits that may be obtained by participating in on-line or correspondence courses. (3-30-07)

i. A minimum of fourteen (14) hours of continuing education in veterinary medicine, surgery, and dentistry. (3-30-07)

ii. A maximum of six (6) hours of continuing education in management. (3-30-07)

iii. Veterinarians may obtain a maximum of fifteen (15) credit hours through approved on-line or correspondence courses. (3-30-07)

c. Attendance Period. The attendance period shall be based upon the fiscal year (July 1 to June 30). (3-18-99)

d. Report. Each veterinarian subject to these rules shall file a written report, on a form prescribed by the Board, as provided in this rule. (7-1-93)

i. Content of Report. The report shall set forth the record of the veterinarian's compliance with these rules during the attendance period and shall contain at least: (7-1-93)

(1) A list of the courses attended; (7-1-93)

(2) The dates of attendance; (7-1-93)

(3) The sponsoring organization; (7-1-93)

(4) The hours attended, rounded to the nearest one-half (1/2) of an hour; and (7-1-97)

- (5) The veterinarian's signature, under penalty of perjury. (7-1-93)
- ii. Place of Filing. The report of compliance with the continuing veterinary education requirement shall be filed with the secretary of the Board. (3-30-01)
- iii. Time of Filing. The report shall be submitted or postmarked no later than June 30 in the year the veterinarian is required to complete the continuing education requirement. (4-2-08)

04. Exemptions. Upon a showing of good cause by a licensee to the Board, the Board may exempt such licensee from any, all or part of the continuing education requirement or may grant an extension of the required period. Written requests for exemptions from continuing education credits shall be sent to the Board office. (3-30-07)

05. Credit for Attendance. Continuing veterinary education credits may be earned by attending or presenting approved courses in continuing veterinary education. (~~7-1-97~~)()

a. Credits. One (1) credit hour shall be given for each fifty (50) minutes actually spent by the active member in attendance at an accredited, domestic or foreign, course. No credit shall be given for: (7-1-97)

i. Time spent in introductory remarks, coffee and lunch breaks, business meetings or other activities not involving the educational aspects of the course. (3-18-99)

ii. Any course attended before admission to practice veterinary medicine in Idaho. (7-1-93)

iii. Journal and magazine articles, videos or correspondence courses, unless specially approved by the Board. (7-1-97)

b. In cases of solo presentation, the presenter of an approved course shall be entitled to claim one (1) credit hour for each fifty (50) minutes of actual course instruction. By way of limitation, in no case shall the presenter be allowed more than eight (8) credit hours for any particular course or substantially related topic during the applicable two (2) year reporting period, regardless of how many times the course is offered or given. ()

bc. In cases of panel presentations, the number of continuing credit hours each panel member is entitled to claim shall be calculated by multiplying the actual number of course hours by two (2) and dividing that number by the number of panel members involved. (~~3-18-99~~)()

ed. Carryover Credit. No credit for attending approved courses in continuing veterinary education shall be applicable to any reporting period other than that during which the credit is actually earned. (7-1-97)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

**THE UPPER (NORTH FORK) COEUR D'ALENE RIVER TEMPERATURE
TMDL ADDENDUM (HUC 17010301)**

DOCKET NO. 58-0000-1305

NOTICE OF FINAL DECISION

AUTHORITY: In compliance with Section 39-3611, Idaho Code, notice is hereby given that this agency has issued a final decision on the Upper (North Fork) Coeur d'Alene Temperature Total Maximum Daily Load (TMDL) Addendum.

DESCRIPTIVE SUMMARY: The Department of Environmental Quality (DEQ) hereby gives notice of the final decision on the Upper (North Fork) Coeur d'Alene Temperature TMDL Addendum. The final decision may be appealed to the Board of Environmental Quality by initiating a contested case in accordance with Sections 39-107(5), 67-5240 et seq., Idaho Code, and IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." The petition initiating a contested case must be filed with the undersigned hearing coordinator within thirty-five (35) days of the publication date of this notice in the Idaho Administrative Bulletin.

The area covered by the Upper (North Fork) Coeur d'Alene Temperature TMDL Addendum (Hydrologic Unit Code 17010301) addresses fifty-four (54) assessment units on Idaho's 2010 Section 303(d) list that are impaired for temperature exceedances. DEQ has submitted the Upper (North Fork) Coeur d'Alene Temperature TMDL Addendum to the U.S. Environmental Protection Agency for approval under the Clean Water Act.

AVAILABILITY OF THE TMDL: Electronic copy of the TMDL can be obtained at <http://www.deq.idaho.gov/cda-river-north-fork-subbasin> or by contacting Ms. Marti Bridges, TMDL Program Manager, (208)373-0382, marti.bridges@deq.idaho.gov.

Dated this 6th day of August, 2013.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

59.01.06 - RETIREMENT RULES OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO (PERSI)

DOCKET NO. 59-0106-1301

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 59-1314(1) and 72-1405, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 18, 2013.

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

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

Add new Rule 174. As a qualified governmental plan under the Internal Revenue Code, PERSI is not subject to ERISA but is subject to the pre-ERISA (as of September 1, 1974) vesting requirements (26 IRC Section 411(e)(2)). This rule sets out PERSI's good faith interpretation of those requirements.

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 IDAPA 04.11.01.811, negotiated rulemaking was not conducted because it would be inconsistent with the Retirement Board's exclusive fiduciary responsibility for plan operations.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Joanna L. Guilfooy, Deputy Attorney General, PERSI, 287-9271.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 25, 2013.

DATED this 12th day of August, 2013.

Don Drum
Executive Director
Public Employee Retirement System of Idaho
607 N. 8th Street, Boise, ID 83702
P.O. Box 83720, Boise, ID 83720-0078
Phone: 208-287-9230
Fax: 208- 334-3408

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 59-0106-1301

163. -- 17~~4~~3. (RESERVED)

174. PRE-ERISA VESTING RULES (RULE 174).

01. Termination or Partial Termination. Upon the effective date of any termination or partial termination or upon a complete discontinuation of contributions: ()

a. No persons who were not theretofore members shall be eligible to become members: ()

b. No further benefits shall accrue; and ()

c. The accrued benefits of all members not theretofore vested and not theretofore forfeited shall immediately become fully vested. ()

Sections Affected Index

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.02.14 - Rules for Weights and Measures

Docket No. 02-0214-1301 (Fee Rule)

016. Maximum And Minimum License Fee Schedule For Commercially Used Weighing And Measuring Instruments And Devices.	18
---	----

02.03.03 - Rules Governing Pesticide and Chemigation Use and Application

Docket No. 02-0303-1301

050. Private Applicator Licensing.	21
051. -- 099. (Reserved)	22
100. Licensing Professional Applicators And Pesticide Dealers.	22

Docket No. 02-0303-1302

800. Pesticide Use On Seed Crop Fields.	29
--	----

02.04.20 - Rules Governing Brucellosis

Docket No. 02-0420-1301

123. Designated Surveillance Area (DSA).	33
---	----

02.04.21 - Rules Governing Importation of Animals

Docket No. 02-0421-1301

010. Definitions.	35
300. Equidae.	37
600. Importation Of Domestic Cervidae.	37
602. Individual Identification.	38

02.06.13 - Rules Relating to Rapeseed Production and Establishment of Rapeseed Districts in the State of Idaho

Docket No. 02-0613-1301

050. Production Districts.	42
051. -- 099. (Reserved)	42
100. Restrictions.	42

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.03.01 - Rules of Building Safety

Docket No. 07-0301-1301

004. Adoption And Incorporation By Reference.	46
--	----

Docket No. 07-0301-1302

004. Adoption And Incorporation By Reference.	54
--	----

Docket No. 07-0301-1303

004. Adoption And Incorporation By Reference.	59
--	----

Docket No. 07-0301-1304

004. Adoption And Incorporation By Reference.	64
--	----

07.03.11 - Rules Governing Manufactured/Mobile Home Industry Licensing

Docket No. 07-0311-1301

000. Legal Authority.	69
001. Title And Scope.	69
002. Written Interpretations.	69
010. Definitions.	69
011. (Reserved)	71
012. License Required.	71
013. The Division's Mailing Address.	74
014. Proof Of Education Required.	74

015. Examination Of Applicant For License.....	75
016. Disciplinary Action Against Licensees.....	75
019. Fees.....	76
022. Civil Penalties.....	78

IDAPA 09 - DEPARTMENT OF LABOR*09.01.30 - Unemployment Insurance Benefit Administration Rules*Docket No. **09-0130-1301**

550. Reporting Requirements.....	80
551. -- 574. (Reserved).....	80
575. Seeking Work.....	80

*09.01.35 - Unemployment Insurance Tax Administration Rules*Docket No. **09-0135-1301**

011. General Provisions.....	84
112. Determining Status Of Worker.....	85

**IDAPA 10 - BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS***10.01.01 - Rules of Procedure*Docket No. **10-0101-1301**

017. Examinations.....	91
019. Licensees Or Certificate Holders Of Other States And Boards.....	92

IDAPA 11 - IDAHO STATE POLICE*11.11.01 - Rules of the Idaho Peace Officer Standards and Training Council*Docket No. **11-1101-1301**

054. Character.....	96
055. Drug Use.....	96
056. Criminal Record.....	97
057. Military Record.....	98
058. Traffic Record Investigation.....	99
059. Background Investigation.....	99
060. Physical - Medical.....	100
061. Mental Examination.....	101
062. Aptitude.....	101
063. Exceptions.....	101
064. Code Of Ethics/Standards Of Conduct.....	101
065. Probationary Period.....	102
066. Special Provisions.....	102
067. -- 069. (Reserved).....	102
327. Administration.....	103

**IDAPA 15 - OFFICE OF THE GOVERNOR
DIVISION OF HUMAN RESOURCES***15.04.01 - Rules of the Division of Human Resources and Personnel Commission*Docket No. **15-0401-1302**

010. Definitions -- A Through E.....	105
012. Definitions -- K Through O.....	107
013. Definitions -- P Through Z.....	107
020. Veterans Preference.....	108
067. Reclassification Of Positions.....	109

071. Merit Increase Matrix.....	109
072. Operation Of Compensation Plan.	109
101. Types Of Eligibility Registers.	110
102. Placement On Register.	111
109. Certification And Selection.	111
110. Number Of Names On Register.	111
141. Calculation Of Retention Points.	112
180. (Reserved)	113
190. Disciplinary Actions.	113
210. Performance Evaluations.	114
211. -- 219. (Reserved).....	115
220. Records.....	115
250. Special Leaves.....	115
251. Administrative Leave.....	117
252. -- 259. (Reserved).....	117

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.05.01 - Use and Disclosure of Department Records

Docket No. **16-0501-1301**

190. Records Of Decedents.....	119
--------------------------------	-----

16.05.06 - Criminal History and Background Checks

Docket No. **16-0506-1302**

060. Employer Registration.....	121
130. Submission Of Application.	121
131. -- 139. (Reserved).....	121
140. Submission Of Fingerprints.....	121
141. -- 149. (Reserved).....	122
150. Time Frame For Submitting Application And Fingerprints.....	122
170. Availability To Provide Services Pending Completion Of The Criminal History And Background Check.	122
190. Criminal History And Background Check Clearance.....	123
191. -- 199. (Reserved).....	123
200. Unconditional Denial.	123
201. -- 209. (Reserved).....	124
210. Disqualifying Crimes Resulting In An Unconditional Denial.	124
230. Relevant Records Resulting In A Conditional Denial.	126
270. Criminal Or Relevant Record - Action Pending.....	127

Docket No. **16-0506-1303 (Fee Rule)**

051. No-Show Fee For Missed Fingerprint Appointment.....	129
052. -- 059. (Reserved).....	129

16.06.01 - Child and Family Services

Docket No. **16-0601-1302 (Fee Rule)**

051. Notice Requirements For ICWA.....	131
562. Confidentiality Of The Child Protection Central Registry And Requests To Check The Registry.	131

16.07.17 - Alcohol and Substance Use Disorders Services

Docket No. **16-0717-1301**

009. Criminal History And Background Check Requirements.....	134
010. Definitions - A Through F.	136
011. Definitions - G Through Z.	137
012. -- 099. (Reserved).....	139

*16.07.20 - Alcohol and Substance Use Disorders Treatment and Recovery
Support Services Facilities and Programs*

Docket No. **16-0720-1301**

009. Criminal History And Background Check Requirements.....	142
011. Definitions - D Through H.....	144
138. Joint Commission Or CARF Accreditation.	145
210. Personnel Policies And Procedures.....	146

16.07.33 - Adult Mental Health Services

Docket No. **16-0733-1301**

009. Criminal History And Background Check Requirements.....	152
010. Definitions.	154

IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE

18.01.04 - Rules Pertaining to Bail Agents

Docket No. **18-0104-1301**

016. (Reserved)	158
-----------------------	-----

IDAPA 20 - DEPARTMENT OF LANDS

20.02.01 - Rules Pertaining to the Idaho Forest Practices Act

Docket No. **20-0201-1301**

010. Definitions.	160
030. Timber Harvesting.....	166

IDAPA 23 - BOARD OF NURSING

23.01.01 - Rules of the Idaho Board of Nursing

Docket No. **23-0101-1301**

401. Licensed registered Nurse (RN).....	172
460. Licensed Practical Nurse (LPN).	173
461. -- 489. (Reserved).....	174
490. Unlicensed Assistive Personnel (UAP).	174

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.06.01 - Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants

Docket No. **24-0601-1301**

021. Application For Licensure.....	177
-------------------------------------	-----

24.07.01 - Rules of the Idaho State Board of Landscape Architects

Docket No. **24-0701-1301 (Fee Rule)**

201. Application Form (Rule 201).	180
300. Examinations (Rule 300).	180
400. Fees (Rule 400).	181
500. Meetings (Rule 500).	181

24.08.01 - Rules of the State Board of Morticians

Docket No. **24-0801-1301**

450. Funeral Establishment And Crematory Establishment (Rule 450).....	183
451. (Reserved)	184
452. Minimum Standards (Rule 452).	184
455. Responsibility, Inspection, And Confidentiality Of Records (Rule 455).....	184
501. Discipline (Rule 501).	185

24.14.01 - Rules of the State Board of Social Work Examiners

Docket No. **24-1401-1301**

211. Social Work Supervisor Registration (Rule 211)..... 187

IDAPA 28 - DEPARTMENT OF COMMERCE

28.03.01 - Rules of the Idaho Opportunity Fund

Docket No. **28-0301-1301 (New Chapter)**

000. Legal Authority..... 190
 001. Title And Scope..... 190
 002. Written Interpretations..... 190
 003. Administrative Appeals..... 190
 004. Office -- Office Hours -- Mailing Address And Street Address..... 190
 005. Public Records Act Compliance..... 191
 006. -- 009. (Reserved)..... 191
 013. Definitions..... 191
 014. Grant Awards..... 191
 016. Reporting..... 193
 017. -- 999. (Reserved)..... 193

IDAPA 35 - STATE TAX COMMISSION

35.01.05 - Motor Fuels Tax Administrative Rules

Docket No. **35-0105-1301**

011. -- 109. (Reserved)..... 201
 132. Licensed Gaseous Fuels Distributor's Reports (Rule 132)..... 201
 133. -- 134. (Reserved)..... 204
 270. Refund Claims -- Documentation (Rule 270)..... 204
 292. Calculation Of Refunds For Nontaxable Uses Of Motor Fuels In Motor Vehicles. (Rule 292).. 206
 410. Adoption Of International Fuel Tax Agreement (Rule 410)..... 208
 510. Application And Reporting Of The Petroleum Transfer Fee (Rule 510)..... 208

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.02.71 - Rules Governing Driver's License Violation Point System

Docket No. **39-0271-1301**

100. Violation Point Count System..... 212
 101. -- 199. (Reserved)..... 212
 200. List Of Moving Traffic Convictions And/Or Violations Point Count..... 212
 400. Completion Of A Defensive Driving Class Or Traffic Safety Education Program..... 214

39.03.12 - Rules Governing Safety Requirements of Overlegal Permits

Docket No. **39-0312-1301**

100. Lighting Requirements For Oversize Vehicles And/Or Loads Traveling After Dark..... 217
 101. -- 199. (Reserved)..... 217
 200. Flagging Requirements For Oversize Vehicles And/Or Loads..... 217
 201. -- 299. (Reserved)..... 218
 300. Signing Requirements Of Towing Vehicles, Oversize Vehicles And/Or Loads..... 218
 500. Pilot/Escort Vehicle Sign Requirements..... 218
 800. Pilot/Escort Vehicle Placement..... 218
 801. -- 899. (Reserved)..... 219
 900. Convoy Of Overlegal Loads..... 219
 901. -- 949. (Reserved)..... 219
 950. Pilot/Escort Vehicle And Travel Time Requirements Map..... 219

IDAPA 46 - BOARD OF VETERINARY MEDICINE

46.01.01 - Rules of the State of Idaho Board of Veterinary Medicine

Docket No. **46-0101-1301**

102. Certified Veterinary Technician Mandatory Continuing Education.....	221
103. Supervising Veterinarians.....	221
154. Record Keeping Standards.....	222
205. Certified Euthanasia Technician.....	225

Docket No. **46-0101-1302**

015. Mandatory Continuing Veterinary Education.....	231
---	-----

IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

59.01.06 - Retirement Rules of the Public Employee Retirement System of Idaho (PERSI)

Docket No. **59-0106-1301**

163. -- 173. (Reserved).....	235
174. Pre-ERISA Vesting Rules (Rule 174).....	235

LEGAL NOTICE

Summary of Proposed Rulemakings

PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the latest publication of the state Administrative Bulletin.

*Deadline for submission of written comments is September 25, 2013, unless otherwise noted.
Deadline for public hearing requests is September 18, 2013, unless otherwise noted.
(Temp & Prop) indicates the rule is both Temporary and Proposed.
(*PH) indicates that a public hearing has been scheduled.*

IDAPA 02 - DEPARTMENT OF AGRICULTURE PO Box 790 Boise, ID 83701

02-0214-1301, Rules for Weights and Measures. Establishes a minimum \$12 annual license fee for devices; adds new categories for devices emerging into the market place; increases certain license fees to more accurately reflect inspection costs.

02.03.03 - Rules Governing Pesticide and Chemigation Use and Application

02-0303-1301, Allows for a one-year time period for new or renewing licensees to obtain an applicator license without penalty and provides a cut-off time for inactive licensees to renew their licenses before they will be required to retest.

02-0303-1302, Allows pesticide use on certain new seed crops without the need for an established residue tolerance.

02-0420-1301, Rules Governing Brucellosis. Establishes a process for obtaining a permit that is required before a producer can move cattle out of a Designated Surveillance Area (DSA).

02-0421-1301, Rules Governing Importation of Animals. Requires compliance with the National Chronic Wasting Disease (CWD) Herd Certification Program (HCP) prior to domestic cervidae importation into Idaho; clarifies and defines equine infectious anemia (EIA) import testing (Coggins test) requirements for horses destined for slaughter.

02-0613-1301, Rules Relating to Rapeseed Production and Establishment of Rapeseed Districts in the State of Idaho. Consolidates the various growing districts to reflect the current status and practice of growing edible and industrial rapeseed in Idaho.

IDAPA 07 - DIVISION OF BUILDING SAFETY PO Box 83720, Boise, ID 83720-0078

07.03.01 - Rules of Building Safety

07-0103-1301, Updates incorporation by reference of the International Residential Code and the International Energy Conservation Code with amendments related to allowing day care facilities within a residence and providing for alternate methods of compliance with the energy code.

07-0103-1302, Adds an alternate method of bracing walls in one- and two-family dwellings by including the most recent edition of the APA System Report SR-102 as an additional standard.

07-0103-1303, Allows an owner-occupied lodging house occupancy (bed and breakfast) with 3 or fewer guestrooms to be constructed or remodeled using the Residential Code and allows same to be operated without fire sprinklers but requires installation of smoke and carbon monoxide alarms.

07-0103-1304, Deletes from the Residential Code the requirement that floors in residences not already fire resistance rated to be enhanced with an additional structural fire protection on the underside of the floor assembly.

07-0311-1301, Rules Governing Manufactured/Mobile Home Industry Licensing. Per Idaho law removes licensing requirement for individuals and companies providing service and repair work on manufactured and mobile homes; clarifies definitions.

**IDAPA 09 - DEPARTMENT OF LAROR
317 W. Main St., Boise, ID 83735**

09-0130-1301, Unemployment Insurance Benefit Administration Rules. Adds enhanced work search reporting requirements to the Department's existing internet-based reporting system for unemployment insurance benefit claimants; amends "reasonable length of time" job attached classification standard with a maximum 12-week standard.

09-0135-1301, Unemployment Insurance Tax Administration Rules. Requires employers to report contributions online unless a waiver is granted by the Department; revises current "independently established" prong of the independent contractor test for unemployment insurance tax purposes with an economic reality test.

**IDAPA 11 - IDAHO STATE POLICE
700 S. Stratford Dr., Meridian, ID 83652**

11-1101-1301, Rules of the Idaho Peace Officers Standards and Training Council. Defines and clarifies the character qualifications for applicants in the area of moral turpitude, drug use, and criminal record; allows students who are applicants to attend college training programs to appeal denial of application to the POST Council Hearing Board.

**IDAPA 15 - OFFICE OF THE GOVERNOR
DIVISION OF HUMAN RESOURCES AND PERSONNEL COMMISSION
PO Box 83720, Boise, ID 83720-0066**

15-0401-1302, Rules of the Division of Human Resources and Personnel Commission. Per Idaho statute revises definition of 'veteran' and defines 'disabled veteran'; further defines and clarifies 'administrative leave', 'salary equity increase', 'merit increase' and 'underfill'.

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
PO Box 83720, Boise, ID 83720-0036**

16-0501-1301, Use and Disclosure of Department Records. Aligns rule with recent changes in HIPAA to permit a covered entity to disclose or use health information, as allowed by the Privacy Rule.

16.05.06 - Criminal History and Background Checks

16-0506-1302, Clarifies application and fingerprint submission requirements and process; provides an appeal process for individuals whose records are disputed; updates crime list for disqualifying crimes, and conditional and unconditional denials; clarifies when a clearance may be revoked and actions for noncompliance with rules; and clarifies reporting changes to the Department for change in ownership, location, or name.

16-0506-1303, Assesses a fee for missed fingerprint appointments on individuals who are required to have a Department criminal history and background check to help reduce the no-show rate.

16-0601-1302, Child and Family Services. Establishes a process for individuals to obtain confidential information from the child protection registry; imposes a \$20 fee for a name-based registry check.

***16-0717-1301, Alcohol and Substance Use Disorders Services.** (*PH) Provides on a case-by-case basis an administrative review process for individuals who do not receive a criminal history clearance to help establish a peer recovery system for providers of alcohol and substance use disorders services.

***16-0720-1301, Alcohol and Substance Use Disorders Treatment and Recovery Support Services Facilities and Programs.** (*PH) Provides on a case-by-case basis an administrative review process for individuals who do not receive a criminal history clearance to help establish a peer recovery system for providers of alcohol and substance use disorders services and recovery programs.

***16-0733-1301, Adult Mental Health Services.** (*PH) Provides on a case-by-case basis an administrative review process for individuals who do not receive a criminal history clearance to request a waiver to help establish a peer delivery system for providers of adult mental health services.

**IDAPA 18 - DEPARTMENT OF INSURANCE
700 W. State St., Boise, ID 83720**

18-0104-1301, Rules Pertaining to Bail Agents. Deletes section from rule that relates to allowable charges and fees to conform the rule to an Idaho Supreme Court's ruling.

**IDAPA 20 - IDAHO DEPARTMENT OF LANDS
PO Box 83720, Boise, ID 83720-0063**

***20-0201-1301, Rules Pertaining to the Idaho Forest Practices Act.** (*PH) Defines new minimum standing tree requirements for both sides of all Class I and Class II streams in Idaho forestlands; eliminates the current streamside-protection rule sections defining required tree retention in riparian, streamside areas; defines forestry terms 'Forest Type' and 'Relative Stocking'.

**IDAPA 23 - BOARD OF NURSING
PO Box 83720, Boise, ID 83720-0061**

23-0101-1301, Rules of the State Board of Nursing. Deletes specific functions that a licensed nurse cannot delegate to an unlicensed assistive person; allows a licensed nurse to engage in interfaces other than delegation in certain settings.

**IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
PO Box 700, Boise, ID 83720-0063**

24-0601-1301, Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants. (Temp & Prop) Complies with HB 33 which allows the Board to issue a limited permit for a period of 6 months or as extended by the Board.

24-0701-1301, Rules of the Idaho State Board of Landscape Architects. Allows the Board to approve exams prepared and administered by CLARB and any other exams it deems appropriate; requires proof of successful passage of exam approved by Board for licensure applicants; addresses inactive applications; Board must meet twice yearly and whenever deemed necessary by the Board.

24-0801-1301, Rules of the State Board of Morticians. Adds alkaline hydrolysis as an approved cremation process; clarifies that funeral directors can sign certain records; adds funeral directors to the discipline rule.

24-1401-1301, Rules of the State Board of Social Work Examiners. (Temp & Prop) Allows experience obtained in any state by an Idaho licensee to qualify for supervisor registration; clarifies that the supervision rule only applies to those individuals in Idaho pursuing licensure.

**IDAPA 28 - DEPARTMENT OF COMMERCE
700 W. State St., Boise, ID 83720**

28-0301-1301, Idaho Opportunity Fund. (Temp & Prop) New chapter establishes and administers the award and disbursement of grants provided to cities and counties through this fund.

28-0304-1301, Rules of the Business and Jobs Development Grant Fund. (Temp & Prop) Chapter is being repealed and the program replaced by IDAPA 28.03.01, "Idaho Opportunity Fund."

**IDAPA 35 - STATE TAX COMMISSION
PO Box 36, Boise, ID 83722-0410**

35-0105-1301, Motor Fuels Administrative Rules. Per HB 20 allows the Tax Commission to sell gaseous fuel decals;

clarifies records required for exempt sales at manned and unmanned pumps; clarifies the records required for taxable and nontaxable use from a single storage tank when using the proration percentages or alternate percentages; clarifies when motor oils, other than new motor oils, are received in the state and subject to the transfer fee.

**IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT
PO Box 7129, Boise ID 83707-1129**

39-0271-1301, Rules Governing Driver's License Violation Point System. Per HB 274 provides the option for cities to establish a Traffic Safety Education program that a driver, when issued an infraction citation for a moving violation, may elect to attend as an alternative to receiving violation points and insurance rating charges; adds certain moving violations to the list of convictions to eliminate discrepancies between ISTARs and ITD.

39-0312-1301, Rules Governing Safety Requirements of Overlegal Permits. (Temp & Prop) Amends lighting and signing requirements on towing and oversize vehicles and loads to provide greater flexibility to the industry.

**IDAPA 46 - BOARD OF VETERINARY MEDICINE
PO Box 7249, Boise, ID 83707**

46.01.01 - Rules of the State of Idaho Board of Veterinary Medicine

46-0101-1301, Clarifies the continuing education requirements for a certified veterinary technician; authorizes when certified technicians can dispense and deliver certain previously prescribed antibiotics and medications; provides veterinarians 3 business days to respond to a records request from an animal owner or another treating veterinarian; specifies procedures, passing grades and clarification on certification processes for certified euthanasia technicians.

46-0101-1302, Authorizes continuing education credits for course presenters and clarifies credit hours awarded for continuing education panel presentations.

**IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO
PO Box 83720, Boise, ID 83720-0078**

59-0106-1301, Retirement Rules of PERSI. Adds new section to rule that sets out PERSI's good faith interpretation of the pre-ERISA vesting requirements specified under the Internal Revenue Code.

NOTICES OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

IDAPA 35 - IDAHO TAX COMMISSION

35-0103-1302 and 35-0103-1303, Property Tax Administrative Rules.

Please refer to the Idaho Administrative Bulletin, [September 4, 2013, Volume 13-9](#), 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.

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

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.*

ABRIDGED RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

*Idaho Department of Administration
Office of the Administrative Rules Coordinator*

April 4, 2013 -- September 4, 2013

*(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 April 4, 2013 that have not been
adopted as final rules and all rulemakings being promulgated after April 4, 2013 - Sine Die.)*

IDAPA 02 -- DEPARTMENT OF AGRICULTURE

02.02.14, Rules for Weights and Measures

- 02-0214-1301** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-6
- 02-0214-1302** Proposed Rulemaking, Bulletin Vol. 13-7
- 02-0214-1301** Proposed Rulemaking (Fee Rule), Bulletin Vol. 13-9
- 02-0214-1302** Adoption of Pending Rule, Bulletin Vol. 13-9 (eff. *PLR 2014)

02.03.03, Idaho Department of Agriculture Rules Governing Pesticide and Chemigation Use and Application

- 02-0303-1301** Proposed Rulemaking, Bulletin Vol. 13-9
- 02-0303-1302** Proposed Rulemaking, Bulletin Vol. 13-9

02.04.19, Rules Governing Domestic Cervidae

- 02-0419-1301** Proposed Rulemaking, Bulletin Vol. 13-7
- 02-0419-1301** Adoption of Pending Rule, Bulletin Vol. 13-9 (eff. *PLR 2014)

02.04.20, Rules Governing Brucellosis

- 02-0420-1301** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-7
- 02-0420-1301** Proposed Rulemaking, Bulletin Vol. 13-9

02.04.21, Rules Governing the Importation of Animals

- 02-0421-1301** Proposed Rulemaking, Bulletin Vol. 13-9

02.04.27, Rules Governing Deleterious Exotic Animals

- 02-0427-1301** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-7 (Rulemaking discontinued)

02.03.03, Idaho Department of Agriculture Rules Governing Pesticide and Chemigation Use and Application

- 02-0303-1301** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-6
- 02-0303-1302** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-6

02.04.21, Rules Governing the Importation of Animals

- 02-0421-1301** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-6

02.04.27, Rules Governing Deleterious Exotic Animals

- 02-0427-1301** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-7
(Negotiations Ended - Rulemaking Terminated)

02.06.02, Rules Pertaining to the Idaho Commercial Feed Law

- 02-0602-1301** Proposed Rulemaking, Bulletin Vol. 13-6
- 02-0602-1301** Adoption of Pending Rule, Bulletin Vol. 13-9 (eff. *PLR 2014)

02.06.09, Rules Governing Invasive Species

- 02-0609-1301** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-6
- 02-0609-1301** Proposed Rulemaking, Bulletin Vol. 13-8

02.06.12, Rules Pertaining to the Idaho Fertilizer Law

- 02-0612-1301** Proposed Rulemaking, Bulletin Vol. 13-6
- 02-0612-1301** Adoption of Pending Rule, Bulletin Vol. 13-9 (eff. *PLR 2014)

02.06.13, Rules Relating to Rapeseed Production and Establishment of Rapeseed Districts in the State of Idaho

- 02-0613-1301** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-7
- 02-0613-1302** Proposed Rulemaking, Bulletin Vol. 13-9

02.06.22, Noxious Weed Rules

- 02-0622-1301** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-6
02-0622-1301 Proposed Rulemaking, Bulletin Vol. 13-8

02.06.23, Noxious Weed Free Gravel and Rock Products Rules

- 02-0623-1301** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-6
02-0623-1301 Proposed Rulemaking (New Chapter), Bulletin Vol. 13-8

02.06.25, Rules Governing Diseases and Pests of Soybeans

- 02-0625-1301** Notice of Intent to Promulgate Rules - Negotiated Rulemaking (New Chapter), Bulletin Vol. 13-7

02.06.41, Rules Pertaining to the Idaho Soil and Plant Amendment Act of 2001

- 02-0641-1301** Proposed Rulemaking, Bulletin Vol. 13-6
02-0641-1301 Adoption of Pending Rule, Bulletin Vol. 13-9 (eff. *PLR 2014)

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 (Rulemaking discontinued by agency)
07-0106-1301 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-5

07.03.01, Rules of Building Safety

- 07-0301-1301** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-5
07-0301-1301 Proposed Rulemaking, Bulletin Vol. 13-9
07-0301-1302 Proposed Rulemaking, Bulletin Vol. 13-9
07-0301-1303 Proposed Rulemaking, Bulletin Vol. 13-9
07-0301-1304 Proposed Rulemaking, Bulletin Vol. 13-9

07.03.11, Rules Governing Manufactured/Mobile Home Industry Licensing

- 07-0311-1301** Proposed Rulemaking, Bulletin Vol. 13-9

07.07.01, Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems

- 07-0701-1301** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-5

***IDAPA 08 -- IDAHO STATE BOARD OF EDUCATION
AND STATE DEPARTMENT OF EDUCATION***

08.01.05, Idaho Promise Scholarship Program

- 08-0105-1301** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-7
08-0105-1301 Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 13-8

08.01.06, Leveraging Educational Assistance Partnership Program

- 08-0106-1301** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-7
08-0106-1301 Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 13-8

08.01.09, Rules Governing the GEAR UP Idaho Scholarship Program

- 08-0109-1301** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-7
08-0109-1301 Proposed Rulemaking, Bulletin Vol. 13-8

08.01.11, Registration of Postsecondary Educational Institutions and Proprietary Schools

- 08-0111-1301** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-7

08.01.12, Idaho Minority and "At-Risk" Student Scholarship Program

- 08-0112-1301** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-7

08-0112-1301 Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 13-8

08.01.13, Rules Governing the Idaho Opportunity Scholarship Program

08-0113-1301 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-7

08-0113-1301 Proposed Rulemaking, Bulletin Vol. 13-8

08.02.01, Rules Governing Administration

08-0201-1301 Temporary and Proposed Rulemaking, Bulletin Vol. 13-1 (eff. 12-13-12)T

08-0201-1301 OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 126, Bulletin Vol. 13-5

08-0201-1301 Adoption of Pending Rule, Bulletin Vol. 13-6 (eff. *PLR 2014)

08.02.02, Rules Governing Uniformity

08-0202-1301 Temporary and Proposed Rulemaking, Bulletin Vol. 13-6 (eff. 4-18-13)T

08-0202-1302 Temporary and Proposed Rulemaking, Bulletin Vol. 13-8 (eff. 6-20-13)T

08-0202-1303 Temporary and Proposed Rulemaking, Bulletin Vol. 13-8 (eff. 6-20-13)T

08-0202-1304 Proposed Rulemaking, Bulletin Vol. 13-8

08-0202-1305 Proposed Rulemaking, Bulletin Vol. 13-8

08.02.03, Rules Governing Thoroughness

08-0203-1301 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-7

08-0203-1302 Temporary and Proposed Rulemaking, Bulletin Vol. 13-8 (eff. 6-20-13)T

08-0203-1303 Proposed Rulemaking, Bulletin Vol. 13-8

08-0202-1304 Proposed Rulemaking (Fee Rule), Bulletin Vol. 13-8

08.02.04, Rules Governing Public Charter Schools

08-0204-1301 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-7

08-0204-1301 Temporary and Proposed Rulemaking, Bulletin Vol. 13-8 (eff. 6-20-13)T

08.03.01, Rules of the Public Charter School Commission

08-0301-1301 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-7

08-0301-1301 Temporary and Proposed Rulemaking, Bulletin Vol. 13-8 (eff. 6-20-13)T

IDAPA 09 -- IDAHO DEPARTMENT OF LABOR

09.01.30, Unemployment Insurance Benefits Administration Rules

09-0130-1301 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-7

09-0130-1301 Proposed Rulemaking, Bulletin Vol. 13-9

09.01.35, Unemployment Insurance Tax Administration Rules

09-0135-1301 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-7

09-0135-1301 Proposed Rulemaking, Bulletin Vol. 13-9

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

10.01.01, Rules of Procedure

10-0101-1301 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-5

10-0101-1301 Notice of Proposed Rule, Bulletin Vol. 13-7

10-0101-1301 Adoption of Pending Rule, Bulletin Vol. 13-9 (eff. *PLR 2014)

10.01.02, Rules of Professional Responsibility

10-0102-1301 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-5

10-0102-1301 Notice of Proposed Rule, Bulletin Vol. 13-7

10-0102-1301 Adoption of Pending Rule, Bulletin Vol. 13-9 (eff. *PLR 2014)

10.01.04, Rules of Continuing Professional Development

10-0104-1301 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-5

10-0104-1301 Notice of Proposed Rule, Bulletin Vol. 13-7

10-0104-1301 Adoption of Pending Rule, Bulletin Vol. 13-9 (eff. *PLR 2014)

IDAPA 11 -- IDAHO STATE POLICE

11.04.02, Rules Governing Simulcasting

11-0402-1301 Temporary and Proposed Rulemaking, Bulletin Vol. 13-8 (eff. 7-1-13)T

11.04.11, Rules Governing Equine Veterinary Practices, Permitted Medications, Banned Substances and Drug Testing of Horses

11-0411-1301 Temporary and Proposed Rulemaking, Bulletin Vol. 13-8 (eff. 7-1-13)T

Peace Office Standards and Training Council

11.11.01, Rules of the Idaho Peace Officer Standards and Training Council

11-1101-1301 Notice of Proposed Rule, Bulletin Vol. 13-9

IDAPA 13 -- IDAHO FISH AND GAME COMMISSION

13.01.08, Rules Governing the Taking of Big Game Animals in the State of Idaho

13-0108-1301 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-7

13-0108-1302 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-7

IDAPA 15 -- OFFICE OF THE GOVERNOR

Executive Orders of the Governor

Executive Order No. **2013-03** Bulletin Vol. 13-5

Executive Order No. **2013-01** Bulletin Vol. 13-2

Executive Order No. **2013-04** Bulletin Vol. 13-5

Executive Order No. **2013-02** Bulletin Vol. 13-5

Division Of Human Resources And Personnel Commission

15.04.01, Rules of the Division of Human Resources and Idaho Personnel Commission

15-0401-1301 Temporary Rulemaking, Bulletin Vol. 13-6 (eff. 7-1-13)T

15-0401-1302 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-6

15-0401-1302 Proposed Rulemaking, Bulletin Vol. 13-9

IDAPA 16 -- DEPARTMENT OF HEALTH AND WELFARE

16.01.01, Emergency Medical Services (EMS) -- Advisory Committee (EMSAC)

16-0101-1301 Proposed Rulemaking, Bulletin Vol. 13-8

16.01.02, Emergency Medical Services (EMS) - Rule Definitions

16-0102-1301 Proposed Rulemaking (New Chapter), Bulletin Vol. 13-8

16.01.03, Emergency Medical Services (EMS) -- Agency Licensing Requirements

16-0103-1301 Proposed Rulemaking (New Chapter), Bulletin Vol. 13-8

16.01.07, Emergency Medical Services (EMS) -- Personnel Licensing Requirements**16-0107-1301** Proposed Rulemaking, Bulletin Vol. 13-8***16.01.12, Emergency Medical Services (EMS) -- Complaints, Investigations, and Disciplinary Actions*****16-0112-1301** Proposed Rulemaking, Bulletin Vol. 13-8***16.02.02, Rules of the Idaho Emergency Medical Services (EMS) Physician Commission*****16-0202-1301** Proposed Rulemaking, Bulletin Vol. 13-7***16.02.03, Emergency Medical Services*****16-0203-1301** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-4**16-0203-1301** Notice of Intent to Promulgate Rules - Negotiated Rulemaking (Second Notice), Bulletin Vol. 13-5**16-0203-1301** Proposed Rulemaking, Bulletin Vol. 13-8***16.03.09, Medicaid Basic Plan Benefits*****16-0309-1301** Temporary and Proposed Rulemaking, Bulletin Vol. 13-8 (eff. 9-1-13)T***16.03.10, Medicaid Enhanced Plan Benefits*****16-0310-1301** Temporary and Proposed Rulemaking, Bulletin Vol. 13-8 (eff. 9-1-13)T***16.03.15, Rules and Minimum Standards for Semi-Independent Group Residential Facilities
for the Developmentally Disabled or Mentally Ill*****16-0315-1301** Proposed Rule (Chapter Repeal), Bulletin Vol. 13-6***16.04.02, Idaho Telecommunication Service Assistance Program Rules*****16-0402-1301** Temporary and Proposed Rulemaking, Bulletin Vol. 13-7 (eff. 9-1-13)T***16.05.01, Use and Disclosure of Department Records*****16-0501-1301** Proposed Rulemaking, Bulletin Vol. 13-9***16.05.06, Criminal History and Background Checks*****16-0506-1301** Temporary and Proposed Rulemaking, Bulletin Vol. 13-8 (eff. 7-1-13)T**16-0506-1302** Proposed Rulemaking, Bulletin Vol. 13-9**16-0506-1303** Proposed Rulemaking (Fee Rule), Bulletin Vol. 13-9***16.06.01, Child and Family Services*****16-0601-1301** Temporary and Proposed Rulemaking, Bulletin Vol. 13-6 (eff. 7-1-13)T**16-0601-1302** Proposed Rulemaking (Fee Rule), Bulletin Vol. 13-9***16.07.17, Alcohol and Substance Use Disorders Services*****16-0717-1301** Proposed Rulemaking, Bulletin Vol. 13-9***16.07.20, Alcohol and Substance Use Disorders Treatment and Recovery Support Services Facilities and Programs*****16-0720-1301** Proposed Rulemaking, Bulletin Vol. 13-9***16.07.33, Adult Mental Health Services*****16-0733-1301** Proposed Rulemaking, Bulletin Vol. 13-9***IDAPA 17 -- INDUSTRIAL COMMISSION******17.02.09, Medical Fees*****17-0209-1301** Temporary Rulemaking, Bulletin Vol. 13-7 (eff. 7-1-13)T

IDAPA 18 -- DEPARTMENT OF INSURANCE

18.01.04, Rules Pertaining to Bail Agents

- 18-0104-1301** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-7
18-0104-1301 Proposed Rulemaking, Bulletin Vol. 13-9

18.01.23, Rules Pertaining to the Idaho Insurance Holding Company System Regulatory Act

- 18-0123-1301** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-7

18.01.30, Individual Disability and Group Supplemental Disability Insurance Minimum Standards Rule

- 18-0130-1301** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-7

18.01.50, Adoption of the International Fire Code

- 18-0150-1301** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-7

IDAPA 19 -- BOARD OF DENTISTRY

19.01.01, Rules of the Idaho State Board of Dentistry

- 19-0101-1301** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-7

IDAPA 20 -- DEPARTMENT OF LANDS

20.02.01, Rules Pertaining to the Idaho Forest Practices Act

- 20-0201-1301** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-6
20-0201-1301 Proposed Rulemaking, Bulletin Vol. 13-9

IDAPA 23 -- BOARD OF NURSING

23.01.01, Rules of the Idaho Board of Nursing

- 23-0101-1301** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-7
23-0101-1301 Proposed Rulemaking, Bulletin Vol. 13-9

IDAPA 24 -- BUREAU OF OCCUPATIONAL LICENSES

24.05.01, Rules of the Board of Drinking Water and Wastewater Professionals

- 24-0501-1301** Temporary Rulemaking (Fee Rule), Bulletin Vol. 13-7 (eff. 5-8-13)T

24.06.01, Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants

- (Moved From IDAPA 22)* (This Rule was Moved, Re-indexed, and Renumbered from IDAPA 22.01.09 - Board of Medicine)
24-0601-1301 Temporary and Proposed Rulemaking, Bulletin Vol. 13-9 (eff. 7-1-13)T

24.07.01, Rules of the Idaho State Board of Landscape Architects

- 27-0701-1301** Proposed Rulemaking (Fee Rule), Bulletin Vol. 13-9

24.08.01, Rules of the State Board of Morticians

- 27-0801-1301** Proposed Rulemaking, Bulletin Vol. 13-9

24.13.01, Rules Governing the Physical Therapy Licensure Board

- 24-1301-1301** Proposed Rulemaking, Bulletin Vol. 13-8

24-1301-1302 Proposed Rulemaking (Fee Rule), Bulletin Vol. 13-8

24.14.01, Rules of the State Board of Social Work Examiners

24-1401-0301 Temporary and Proposed Rulemaking, Bulletin Vol. 13-9 (eff. 6-19-13)T

24.25.01, Rules of the Idaho Driving Businesses Licensure Board

24-2501-1301 Temporary and Proposed Rulemaking, Bulletin Vol. 13-7 (eff. 5-3-13)T

IDAPA 27 -- BOARD OF PHARMACY

27.01.01, Rules of the Idaho State Board of Pharmacy

27-0101-1207 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-12

27-0101-1207 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-1

27-0101-1207 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-2

27-0101-1207 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-3

27-0101-1207 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-5

27-0101-1207 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-7

27-0101-1207 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-8

IDAPA 28 -- DEPARTMENT OF COMMERCE

28.02.07, Rules Governing the Administration of the IGEN Grant Program

28-0207-1301 Temporary Rulemaking (New Chapter), Bulletin Vol. 13-4 (eff. 4-30-13)T

28.03.01, Idaho Opportunity Fund

28-0301-1301 Temporary and Proposed Rulemaking (New Chapter), Bulletin Vol. 13-9 (eff. 8-1-13)T

28.03.04, Rules of the Business and Jobs Development Grant Fund

28-0304-1301 Temporary and Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 13-9 (eff. 8-1-13)T

IDAPA 31 -- PUBLIC UTILITIES COMMISSION

31.01.01, Rules of Procedure of the Idaho Public Utilities Commission

31-0101-1301 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-8

IDAPA 33 -- REAL ESTATE COMMISSION

33.01.01, Rules of the Idaho Real Estate Commission

33-0101-1301 Temporary and Proposed Rulemaking, Bulletin Vol. 13-8 (eff. 6-13-13)T

IDAPA 34 -- SECRETARY OF STATE

34.06.01, Rules Governing the Electronic Recording of Real Property

34-0601-1301 Temporary and Proposed Rulemaking (New Chapter), Bulletin Vol. 13-7 (eff. 5-21-13)T

34-0601-1301 Adoption of Pending Rule, Bulletin Vol. 13-9 (eff. *PLR 2014)

IDAPA 35 -- STATE TAX COMMISSION

35.01.01, Income Tax Administrative Rules

- 35-0101-1300L** Legislative Action - Final Rule, Bulletin Vol. 13-5
35-0101-1301 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-5

35.01.02, Idaho Sales and Use Tax Administrative Rules

- 35-0102-1301** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-1
35-0102-1302 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-7

35.01.03, Property Tax Administrative Rules

- 35-0103-1301** Temporary Rulemaking, Bulletin Vol. 13-5
35-0103-1302 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-9
35-0103-1303 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-9

35.01.05, Motor Fuels Tax Administrative Rules

- 35-0105-1301** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-5
35-0105-1301 Proposed Rulemaking, Bulletin Vol. 13-9

35.01.06, Hotel/Motel Room and Campground Sales Tax Administrative Rules

- 35-0106-1301** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-7

35.01.09, Idaho County Option Kitchen and Table Wine Tax Administrative Rules

- 35-0109-1301** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-7

35.01.10, Idaho Cigarette and Tobacco Products Tax Administrative Rules

- 35-0110-1301** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-7

35.01.14, Prepaid Wireless E911 Fee Rules

- 35-0114-1301** Notice of Intent to Promulgate Rules - Negotiated Rulemaking (New Chapter), Bulletin Vol. 13-7

IDAHA 39 -- IDAHO TRANSPORTATION DEPARTMENT**39.02.71, Rules Governing Drivers License Violation Point Count System**

- 39-0271-1301** Proposed Rulemaking, Bulletin Vol. 13-9

39.03.12, Rules Governing Safety Requirements of Overlegal Permits

- 39-0312-1301** Temporary and Proposed Rulemaking, Bulletin Vol. 13-9

39.03.15, Rules Governing Excess Weight Permits for Reducible Loads

- 39-0315-1301*** Temporary and Proposed Rulemaking, Bulletin Vol. 13-8 (eff. 7-1-13)T
 *Rulemaking changes chapter name to: "Rules Governing Excess Weight Permits for Reducible Loads"
 from: "Rules Governing Interstate Excess Weight Permits"

39.03.22, Rules Governing Overlegal Permits for Extra-Length, Excess Weight, and Up to 129,000 Pound Vehicle Combinations

- 39-0322-1301*** Temporary and Proposed Rulemaking, Bulletin Vol. 13-8 (eff. 7-1-13)T
 *Rulemaking changes chapter name to: "Rules Governing Overlegal Permits for Extra-Length, Excess Weight, and Up to 129,000 Pound Vehicle Combinations" from: "Rules Governing Overlegal Permits for Extra-Length Vehicle Combinations"
39-0322-1302 Proposed Rulemaking, Bulletin Vol. 13-8

39.03.23, Rules Governing Revocation of Overlegal Permits

- 39-0323-1301*** Temporary and Proposed Rulemaking, Bulletin Vol. 13-8 (eff. 7-1-13)T
 *Rulemaking changes chapter name to: "Rules Governing Revocation of Overlegal Permits"
 from: "Rules Governing Revocation of Special Permits"

IDAPA 37 -- DEPARTMENT OF WATER RESOURCES***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***

38-0406-1301 Temporary and Proposed Rulemaking, Bulletin Vol. 13-5 (eff. 4-5-13)T

38-0406-1301 Adoption of Pending Rule, Bulletin Vol. 13-7 (eff. *PLR 2014)

38.04.08, Rules Governing Use of Idaho State Capitol Exterior

38-0408-1301 Temporary and Proposed Rulemaking, Bulletin Vol. 13-5 (eff. 4-5-13)T

38-0408-1301 Adoption of Pending Rule, Bulletin Vol. 13-7 (eff. *PLR 2014)

IDAPA 46 -- BOARD OF VETERINARY MEDICAL EXAMINERS***46.01.01, Rules of the State of Idaho Board of Veterinary Medicine***

46-0101-1301 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-6

46-0101-1301 Proposed Rulemaking, Bulletin Vol. 13-9

46-0101-1302 Proposed Rulemaking, Bulletin Vol. 13-9

IDAPA 58 -- DEPARTMENT OF ENVIRONMENTAL QUALITY

58-0000-1301 The Little Salmon River Subbasin TMDL 2013 Addendum (HUC 17060210), Bulletin Vol. 13-4

58-0000-1302 Blackfoot River Subbasin TMDL 2013 Addendum (HUC 17040207), Bulletin Vol. 13-6

58-0000-1303 Lower North Fork Clearwater River Subbasin Five Year Review and TMDL Addendum (HUC 17060308), Bulletin Vol. 13-6

58-0000-1304 Federal Plan Delegation Request for the Control of Air Emissions from Hospital/Medical/Infectious Waste Incinerators, Bulletin Vol. 13-8

58-0000-1305 The Upper (North Fork) Coeur d'Alene River temperature TMDL Addendum (HUC 17010301), Bulletin Vol. 13-9

58.01.01, Rules for the Control of Air Pollution in Idaho

58-0101-1301 Proposed Rulemaking, Bulletin Vol. 13-8

58.01.02, Water Quality Standards

58-0102-1201 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-9

58-0102-1301 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-8

IDAPA 59 -- PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO (PERSI)

59.01.06, PERSI Retirement Rules

59-0106-1301 Proposed Rulemaking, Bulletin Vol. 13-9

Subject Index

A

- Administrative Leave 117
 - Adoption Of International Fuel Tax Agreement 208
 - Application 72
 - Application & Reporting Of The Petroleum Transfer Fee 208
 - Application 208
 - Casualty Loss & Two Percent (2%) Allowance Not Deductible 209
 - Exclusion of Petroleum & Petroleum Products on Which The Fee Has Previously Been Paid 209
 - Exemption to Application of the Transfer Fee 209
 - Incorporation of Other Relevant Rules 210
 - Licensed Distributors & Limited Licenses 209
 - Payment 210
 - Petroleum & Petroleum Products 209
 - Receipt of Petroleum Products 209
 - Reporting Requirements 209
 - Application For Licensure 177
 - Licensure by Endorsement 177
 - Licensure By Examination 177
 - Limited Permit 178
 - Occupational Therapists Practicing in Idaho on Effective Date of These Rules 178
 - Personal Interview 178
 - Temporary License 178
 - Application Form 180
 - Deadlines 180
 - Inactive Applications 180
 - Materials Submitted to Board 180
 - Reference Requirements 180
 - Aptitude 101
 - Availability To Provide Services
 - Pending Completion Of The Criminal History & Background Check 122
 - Employees of Providers, Contractors, Emergency Medical Services (EMS), or the Department 122
 - Individuals Licensed or Certified by the Department 123
- ## B
- Background Investigation 99
 - Procedures 99
 - Requirements 99
 - Bond 72
- ## C
- Calculation Of Refunds For Nontaxable Uses Of Motor Fuels In Motor Vehicles 206
 - Additional Nontaxable Roadways 206
 - Calculation 206
 - Fuel Records Required for Refund Claims 206
 - IFTA Licensees 207
 - Nonstandard Allowances 207
 - Nontaxable Gallons of Fuel Claimed by Non-IFTA Licensees 207
 - Nontaxable Miles Defined 206
 - Power Take-Off (PTO) & Auxiliary Engine Allowances (Allowances) 206
 - Calculation Of Retention Points 112
 - Audit of Retention Points 112
 - Calculation Date Cutoff 112
 - Calculation of Retention Points Since Last Evaluation 112
 - No Performance Evaluation on File for a Twelve-Month Period 112
 - Veterans Preference 112
 - Certification & Selection 111
 - Certification, Department Examinations 24
 - Certified Euthanasia Technician 225
 - Certification 227
 - Certification Renewal 228
 - Certification Standards 226
 - Duties 228
 - Training & Examinations 225
 - Certified Veterinary Technician
 - Mandatory Continuing Education 221
 - Character 96
 - May Be Accepted 96
 - May Be Rejected 96
 - Moral Turpitude 96
 - Civil Penalties
 - Dealing with Stolen Manufactured or Mobile Homes 78
 - Deceptive Practice 78
 - Failure to Maintain a Principal Place of Business 78
 - Gross Violation 78
 - Industry Licensing 78
 - Judicial Review 78
 - Violation of Rules & Statutes 78
 - Code Of Ethics/Standards Of Conduct 101
 - Appropriately Enforce the Law 102
 - Fundamental Duty 102
 - Personal & Official Life 102
 - Professional Performance 102
 - Public Trust 102
 - Completion Of A Defensive Driving Class Or Traffic Safety Education Program 214
 - Driver May Not Reserve Point Reduction 215
 - Driving Conviction Cannot Be Removed 215
 - Removal of Points Upon Completion of Defensive Driving Class or Traffic Safety Education Program 214
 - Suspension for Excessive Points 215
 - Confidentiality Of The Child Protection Central Registry & Requests To Check The Registry 131
 - Child Protection Central Registry Check Fee 131
 - Confidentiality of Child Protection Central Registry 131
 - Convoy Of Overlegal Loads 219
 - Convoing Manufactured Homes, Office Trailers, & Modular Buildings 219
 - Convoing Oversize Loads 219
 - Criminal History & Background Check Clearance 123
 - Criminal History & Background Check Requirements 134, 142, 152
 - Administrative Review 135, 143, 153
 - Administrative Review Decision 135, 143, 153
 - Availability to Work 142
 - Availability to Work or Provide Service 134, 152
 - Compliance With Department Criminal History & Background Check 134, 152
 - Criminal History & Background Check 142
 - Decision to Grant Waiver 135, 143, 153
 - Employer Responsibilities 136, 144, 154
 - Factors Considered During Administrative Review 135, 143, 153
 - No Waiver for Certain Designated Crimes 134, 142, 152
 - Revocation of Waiver 136, 143, 154
 - Scheduling of Administrative Review 143, 153
 - Waiver Decisions Are Not Subject to Review or Appeal 136, 143, 154
 - Waiver of Criminal History & Background Check Denial 134, 142, 152
 - Written Request for Administrative Review & Waiver 135, 143, 153
 - Criminal Or Relevant Record - Action Pending 127
 - Availability to Provide Services 127
 - Notice of Inability to Proceed 127
 - Reconsideration of Action Pending 127
 - Criminal Record 97
 - Conviction 97
 - Felony Conviction 98
 - Fingerprints 97
 - Misdemeanor Conviction 97
- ## D
- Definitions 154, 160, 191
 - Acceptable Tree Species 160
 - Act 160
 - Additional Hazard 160
 - Adult 154
 - Adult Mental Health Services 154

- Applicant 154
Average DBH 160
Best Management Practice (BMP) 160
Board 160
Buffer Strip 160
Chemicals 161
Client 154
Clinical Judgment 154
Clinical Necessity 154
Clinical Team 154
Commercial Products 161
Company Performance Agreement 191
Condition of Adjoining Area 161
Constructed Skid Trail 161
Contaminate 161
Cross-Ditch 161
Cull 161
D Through H 144
 Department 144
 Detoxification Services 144
 Director 144
 Discharge 144
 Discharge Summary 144
 Early Intervention Services 144
 Education 144
 Executive Director 144
 Facility/location 144
 Good Cause 144
 Governing Body 145
 Group Counseling 145
 Guardian 145
Department 154, 161, 191
Deterioration Rate 161
Director 161
Emergency 154
Emergency Forest Practice 161
Federal Poverty Guidelines 155
Fertilizers 161
Fire Trail 161
Forest Land 161
Forest Practice 161
Forest Regions 162
Forest Type 162
Fuel Quantity 162
Functional Impairment 155
Good Cause 155
Grantee Business 191
Gravely Disabled 155
Ground Based Equipment 162
Habitat Types 162
Harvesting 162
Hazard 162
Hazard Offset 162
Hazard Points 162
Hazard Reduction 163
Individualized Treatment Plan 155
Intake Eligibility Assessment 155
Lake 163
Landowner 163
Large Organic Debris (LOD) 163
Local Government Grant Agreement 191
Merchantable Material 163
Merchantable Stand of Timber 163
Noncommercial Forest Land 163
Operating Area 163
Operator 163
Ordinary High Water Mark 163
Outstanding Resource Water 163
Partial Cutting 163
Prescribed Fire 163
Present Condition of Area 163
Public Cost 191
Public Resource 164
Reforestation 164
Relative Stocking 164
Relief Culvert 164
Rules 164
Serious & Persistent Mental Illness (SPMI) 155
Serious Mental Illness (SMI) 155
Site 164
Site Factor 164
Site Specific Best Management Practice 164
Size of Thinning Block 164
Slash 164
Sliding Fee Scale 156
Snags 164
Soil Erosion 164
Soil Stabilization 164
State 164
Stream 164
Substantial Material Change in Circumstances 156
Timber Owner 165
Time of Year of Forest Practice 166
Definitions - A Through F 136
 Adolescent 136
 Adult 136
 Applicant 136
 ASAM PPC-2R 136
 Assessment & Referral Services 136
 Child 136
 Client 136
 Clinical Judgment 136
 Clinical Necessity 136
 Clinical Team 136
 Clinically Managed Low-Intensity Residential Treatment 137
 Clinically Managed Medium-Intensity Residential Treatment 137
 Comprehensive Assessment 137
 Contracted Intermediary 137
 Department 137
 Early Intervention Services 137
 Emergency 137
 Federal Poverty Guidelines 137
Definitions - G Through Z 137
 Good Cause 137
 Gravely Disabled 137
 Individualized Service Plan 137
 Intake Eligibility Screening 138
 Intensive Outpatient Services 138
 Medically Monitored
 Detoxification 138
 Medically Monitored Inpatient Treatment 138
 Network Treatment Provider 138
 Opioid Replacement Outpatient Services 138
 Outpatient Services 138
 Priority Population 138
 Recovery Support Services 138
 Residential Social Detoxification 138
 Sliding Fee Scale 138
 Substance Dependence 138
 Substance Use Disorder 139
 Substance-Related Disorders 139
 Substantial Material Change in Circumstances 139
Definitions, IDAPA 02.04.21 35
 Accredited Veterinarian 35
 Administrator 35
 Animals 35
 Approved Brucella Vaccine 35
 Approved Equine Feedlot 35
 Approved Feedlot 35
 Approved Slaughter Establishment 35
 Brucellosis 35
 Brucellosis Surveillance Area or High Risk Areas 35
 Camelids 35
 Cattle 35
 Certificate 35
 Department 35
 Director 35
 Division of Animal Industries 35
 Domestic Bison 35
 Domestic Cervidae 36
 Domesticated 35
 Equidae 36
 Exposed 36
 Federal Animal Health Official 36
 Feeder Animals 36
 Game Birds 36
 Hatching Eggs 36
 Livestock 36
 National CWD Herd Certification Program 36
 Negative 36
 Official Identification 36
 Official Vaccinate 36
 Person 36
 Poultry 36
 Quarantine 36
 Ratites 36
 Slaughter Animals 36
 State Animal Health Official 36
 VHSV Positive Area 36
 Waterfowl 37
Definitions, IDAPA 07.03.11
 Administrator 69
 Board 69
 Bond 69
 Branch Office 69
 Business 69

- Deceptive Practice 69
Division 70
Installation 70
Installer 70
Manufactured Home 70
Manufactured Home Retailer 70
Manufactured/Mobile Home
Salesman 70
Manufacturer 70
Mobile Home 71
Principal Place of Business 71
Responsible Managing Employee
(RME) 71
Unit 71
Used Manufactured Home or Mobile
Home 71
Definitions, IDAPA 15.04.01, Rules of
the Division of Human Resources &
Idaho Personnel Commission
A Through E 105
Administrative Leave 105
Administrator 105
Agency Classification 105
Allocation 105
Appeal 105
Appellant 105
Appointing Authority 105
Appointment, Limited 105
Appointment, Nonclassified 105
Appointment, Permanent 105
Appointment, Probationary 105
Appointment, Project
Exempt 105
Appointment, Provisional 105
Appointment, Seasonal 105
Appointment, Temporary 106
Base Pay 106
Certifiable Range 106
Classified Service 106
Commission 106
Compensation Plan 106
Compensation Schedule 106
Consultant 106
Disabled Veteran 106
Dismissal 106
Due Process 106
Employment History 106
Examination 106
Suspension 108
K Through O
Key Employee 107
Layoff 107
Light or Limited Duty 107
Merit Increase 107
Merit Increase Matrix 107
Military Duty 107
Minimum Qualification
Specialty 107
Occasional or Sporadic Work 107
On-Call Time 107
P Through Z 107
Pay Line Exception 107
Permanent Employee 107
Promotion 107
Reduction in Pay 107
Register 107
Resignation 108
Respondent 108
Salary Equity Increase 108
Termination 108
Transfer 108
Underfill 108
USERRA 108
Veteran 108
Workweek 108
Definitions, IDAPA 15.04.01, Rules of
the Division of Human Resources &
Idaho Personnel Commission -- K
Through O 107
Demonstration of Competence 22
Department Examination
Procedures 25
Designated Surveillance Area
(DSA) 33
Individual Identification
Requirements 33
Permit Required for Movement out of
the DSA 33
Testing Requirements Within The
DSA 33
Determining Status Of Worker 85
Determining if Worker is an
Employee 85
Determining if Worker is an
Independent Contractor 86
Evidence of Contractual Liability for
Termination 89
Meeting Criteria for Covered
Employment 89
Proving Worker is Engaged in
Independently Established
Business 86
Proving Worker is Free From Control
or Direction in His Work 86
Disciplinary Action Against Licensees
Conviction of Felony 76
Conviction of Misdemeanor 76
Dealing With Stolen Manufactured or
Mobile Homes 76
Deceptive Practice 75
Disclosing Contents of
Examination 75
Encouraging Falsification 76
Failure of Organizations to License
its Employees 76
Failure to Have Principal Place of
Business 75
Failure to Honor Warranties 76
Failure to Maintain Any Required
License 76
Failure to Permit Access to
Documentary Materials 76
Failure to Provide Business
Name 76
Failure to Respond to Notice 76
False Information 75
Installation Supervisor Required 76
Poor Workmanship 76
Proof of Employment 75
Revocation of License 75
Revocation or Denial of License 76
Violation of Permit or Inspection
Requirements 76
Violation of Rules & Statutes 75
Disciplinary Actions 113
Cause for Disciplinary Actions or
Separation From State
Service 113
Disciplinary Suspension 114
Notice to Administrator 114
Suspension for Investigation 114
Suspension on Felony Charges 114
Discipline 185
Civil Fine 185
Costs & Fees 185
Disqualifying Crimes Resulting In An
Unconditional Denial 124
Disqualifying Crimes 124
Disqualifying Five-Year
Crimes 125
Underlying Facts &
Circumstances 126
Drug Use 96
Drug Trafficking, Manufacturing, &
Related Offenses 96
Juvenile Drug Offense
Convictions 97
Marijuana 96
Other Controlled Substances 96
Prescription Drugs 96
E
Employer Registration 121
Equidae 37
Approved Equine Feedlot 37
EIA Test Requirements 37
Reciprocal Agreements 37
Slaughter Horses 37
Working Horses Included on Grazing
Permits 37
Examination Of Applicant For License
Approval of Examination &
Grade 75
Required Examinations 75
Retesting 75
Examinations 91, 180
Eligibility for Examinations,
Educational Requirements 91
Failing a Section of Exam 180
Minimum Passing Score 180
Exceptions 101
F
Fees 181
Application Fee 181
Examination Fees 181
Fees for Issuance & Renewal of
License 76
Landscape Architect-in-Training
Application Fee 181
Money or Securities Deposit in Lieu
of Performance Bond 77

- Original License & Annual License Fee 181
Performance Bonding Requirements 77
Reinstatement Fee 181
Flagging Requirements For Oversize Vehicles And/Or Loads
Placement of Flags 217
Warning Flags 217
Funeral Establishment & Crematory Establishment 183
Change in Ownership or Location 183
Contents of Application 183
Crematory Establishment 183
Funeral Establishment 183
Funeral Firm 183
- G**
General Provisions
Confidential Information 84
Contribution Due Date 84
Contribution Reports 85
Determination of Payment Date 85
Determinations 85
Filing of an Employer Appeal 84
Lien Interest 84
Penalties & Interest on Bankruptcy 84
Penalty & Interest During Controversy 84
Quarterly Reporting 84
Release of Lien Upon Payment in Full 85
Grant Awards 191
Award Amounts 193
Company Performance Agreements 192
Disbursements 193
Funding 191
Local Government Grant Agreements 191
Local Match 191
- I**
Importation Of Domestic Cervidae 37
Certificate of Veterinary Inspection 37
Meet Testing Requirements 37
National CWD Herd Certification Program Participation 38
Individual Identification 38
Interim Exemption from Pesticide Dealer Licensing & Recordkeeping 27
Issuance, Expiration, & Renewal 72
- J**
Joint Commission Or CARF Accreditation 145
Application Fee 145
Criminal History & Background Checks 145
Organization Chart Verifying
- Staffing Credentials 145
Tuberculosis Testing 145
- L**
License Required 71
Designated License Holder 72
License for Branch Office of Manufactured/Mobile Home Retailer or Resale Broker 72
License for Manufactured/Mobile Home Salesman 73
License for Manufacturers 72
License for Responsible Managing Employee 73
License to Engage in Business as Manufactured/Mobile Home Retailer, Resale Broker, Manufacturer, or Installer 72
Minimum Age Requirement 71
Proof of License 72
Real Estate Brokers 72
Licensed Gaseous Fuels Distributor's Reports 201
Annual Fees for Gaseous Fuels Permits 202
Annual Reconciliation of Gaseous Fuels Receipt Books & Decals 203
Assessment for Unaccounted for Decals 203
Completion of Gaseous Fuels Receipt Book(s) 202
Documentation of Exempt Sales of Gaseous Fuels Delivered into Motor Vehicles 202
Failure to Collect & Remit Tax & Permit Fees 202
Monthly Reports 201
Receipt of Gaseous Fuels 202
Report Due & Payment Required 202
Sales of Gaseous Fuels Decals by The State Tax Commission 203
Licensed Practical Nurse (LPN) 173
Functions 173
Standards 173
Licensed Professional Applicator 27
Licensed Registered Nurse (RN) 172
Chief Administrative Nurse 173
Functions 172
Management Role 173
Standards of Practice 172
Licensees Or Certificate Holders Of Other States & Boards 92
Interstate Registration Evaluation 92
Licensing Periods & Recertification, Pesticide 26
Licensing Professional Applicators & Pesticide Dealers 22
Lighting Requirements For Oversize Vehicles & Loads Traveling After Dark 217
Standards for Lights on Oversize
- Vehicles and/or Loads 217
Standards for Lights on Rear Overhang 217
List Of Moving Traffic Convictions And/Or Violations Point Count 212
- M**
Mandatory Continuing Veterinary Education 231
Approved Courses 231
Credit for Attendance 232
Education Requirements 231
Exemptions 232
Statement of Purpose 231
Maximum & Minimum License Fee Schedule For Commercially Used Weighing & Measuring Instruments & Devices 18
Meetings 181
Mental Examination Procedure 101
Requirement 101
Merit Increase Matrix 109
Military Record Documentation 99
Military Discharge 98
Minimum Standards 184
Casket Not Necessary 184
Delay Before Cremation 184
Embalming 184
Reasonable Sanitation & Safety Required 184
Reduction of Cremated Remains 184
- N**
No-Show Fee For Missed Fingerprint Appointment 129
Cancellation of Appointment 129
Completion of Check 129
No-Show Fee 129
Waiver of Fee 129
Notice Requirements For ICWA 131
Notice of Pending Proceedings -- Who Must be Notified 131
Notice of Pending Proceedings-- When Identity or Location of Parent(s), Indian Custodian(s), or Tribe is Unknown 131
Rights Under a Notice of Pending Proceedings 131
Number Of Names On Register 111
- O**
Operation Of Compensation Plan 109
Authorized Pay Rate 109
Payline Exceptions 110
Salary After Reappointment from Layoff 110
Salary Equity Increases 110
Salary Upon Downward Reassignment 110
Salary Upon Reinstatement 110

- Salary Upon Return from Military Duty 110
- Salary Upon Transfer 110
- Starting Salary 109
- P**
- Performance Evaluations 114
 - Approval of Form 114
 - Evaluation Schedule 115
 - Purpose 114
 - Retention of Evaluation 115
 - Supervisors' Requirements 115
 - Use of Evaluations 114
- Personnel Policies & Procedures 146
 - Contents of Personnel Record for Each Staff Member 148
 - Equal Employment Opportunity 147
 - Hiring Practices 147
 - Job Description for a Position in the Program 148
 - Performance Appraisals 149
 - Required Personnel Policies & Procedures 146
 - Responsible Staff Member to Implement Personnel Policies & Procedures 147
- Pesticide Use On Seed Crop Fields 29
 - Exemption 29
 - Nonfood & Nonfeed Site Conditions 29
- Physical - Medical
 - Procedures 101
 - Requirements 100
- Pilot/Escort Vehicle & Travel Time
 - Requirements Map 219
- Pilot/Escort Vehicle Placement 218
 - Advance Pilot/Escort Vehicle 219
 - First Movement from the Forest 219
 - Front Pilot/Escort Vehicle 218
 - Rear Pilot/Escort Vehicle 218
 - Spacing 219
- Pilot/Escort Vehicle Sign
 - Requirements 218
 - Dimensions 218
 - Oversize Load Signs 218
- Placement On Register 111
 - Disabled Veterans' Preference 111
 - Score Order 111
 - Veterans' Preference 111
 - Veterans' Preference Points for Initial Appointment Only 111
- Pre-ERISA Vesting Rules 235
 - Termination or Partial Termination 235
- Private Applicator Licensing 21
 - Applying for a Private Applicator's License 21
 - License Categories 21
 - License Recertification 21
- Probationary Period 102
 - Extended 102
 - Probation 102
 - Supervisor/Mid-Manager 102
- Production Districts, Districts I through VII 42
- Proof Of Education Required 74
 - Continuing Education Course 74
 - Satisfactory Proof for Initial Application Submission 74
 - Satisfactory Proof for License Renewal 74
- R**
- Reclassification Of Positions 109
 - Effective Date 109
 - Procedure 109
- Record Keeping Standards 222
 - Consent Forms 223
 - Controlled Substances & Prescription or Legend Drugs 223
 - Diagnostic Image Identification & Ownership 223
 - Estimates 223
 - Medical Records 222
 - Ownership of Medical Records 223
 - Postoperative Instructions 223
 - Return or Disposal of Expired Pharmaceuticals & Biologicals 225
 - Treatment Records 223
- Records 115
 - Administrative Records 115
 - Employee Personnel Action Documents 115
 - Employee Service Records 115
 - Transfers, Reemployment & Promotions Between Agencies 115
- Records Of Decedents 119
 - Coroners & Medical Examiners 119
 - Family Members & Others 119
 - Funeral Directors 119
 - Law Enforcement 119
 - Personal Representatives 119
- Refund Claims--Documentation 204
 - Corrected Invoices 204
 - Indian-Owned Retail Outlet 204
 - Invoice Retention 204
 - Records Required for Motor Fuels Tax Refunds 205
 - Refund Documents 204
 - Refunds to Consumers 204
 - Untaxed Motor Fuel 206
- Relevant Records Resulting In A Conditional Denial 126
 - Employees of Providers or Contractors 127
 - Individuals Licensed or Certified by the Department or a Department Employee 126
 - Underlying Facts & Circumstances 127
- Reporting 193
 - Annually 193
 - Quarterly 193
- Reporting Requirements 80
 - Electronic Mail Reports 80
 - Facsimile Reports 80
 - In-Person Reports 80
 - Internet Reports 80
 - Mailed Reports 80
 - When Report Missing 80
- Responsibility, Inspection, & Confidentiality Of Records 184
 - Confidentiality of Records 184
 - Inspection of Records 184
 - Responsibility for Record 184
- Restrictions 42
 - District I 42
 - District II 42
- S**
- Seeking Work 80
 - Attitude & Behavior 80
 - Effort to Secure Employment 80
 - Employer's Hiring Practices 80
 - Job Attachment Classifications 80
 - Jobs Availability 81
 - No Employment Prospects 81
 - Registering & Reporting on Work-Seeking Activity 81
 - Seasonal Availability 81
 - Work-Seeking Requirement Categories 81
- Signing Requirements Of Towing Vehicles, Oversize Vehicles And/Or Loads 218
 - Dimensions 218
 - Displaying Signs 218
 - When Signs Are Required 218
- Social Work Supervisor
 - Registration 187
 - Registration 187
 - Renewal 187
 - Requirements for Registration 187
- Special Leaves 115
 - Bone Marrow & Organ Donor Leave With Pay 117
 - Court & Jury Services & Problem-Solving & Due Process Leave 116
 - Employee Assistance Program Leave 117
 - Leave Defaults 116
 - Leave During Facility Closure or Inaccessibility 117
 - Leave of Absence With Pay 116
 - Leave of Absence Without Pay 115
 - Military Leave With Pay 116
 - Military Leave Without Pay 116
 - Red Cross Disaster Services Leave 117
 - Religious Leave 117
- Special Provisions 102
 - Equal Opportunity Employer 102
 - Minimum Standards 102
 - No Discrimination 102
 - Submission Of Application 121
 - Mail-in Application Process 121
- Submission Of Fingerprints 121
 - Department Fingerprinting

Locations 121
Submission of Reprints 122
Submitting Fingerprints by
Mail 122
Supervising Veterinarians 221
A Supervising Veterinarian
Shall 221
Limitations on Supervising
Veterinarians 222
Statement of Purpose 221

T

Timber Harvesting 166
Drainage Systems 166
Location of Landings, Skid Trails, &
Fire Trails 166
Maintenance of Productivity &
Related Values 169
Purpose 166
Quality of Residual Stocking 166
Soil Protection 166
Stream Protection 167
Treatment of Waste Materials 167
Time Frame For Submitting Application
& Fingerprints 122
Availability to Provide Services 122
Incomplete Application 122
No Extension of Time Frame 122
Traffic Record Investigation
Procedures 99
Requirements 99
Types Of Eligibility Registers 110
Agency Promotional Registers 110
Open Competitive Registers 110
Reemployment Preference
Registers 110
Statewide Promotional
Registers 110

U

Unconditional Denial 123
Appeal of an Unconditional
Denial 124
Challenge of Department's
Unconditional Denial 124
Issuance of an Unconditional
Denial 124
No Exemption Review 124
Reasons for an Unconditional
Denial 123
Unlicensed Assistive Personnel
(UAP) 174
Assistance With Medications 175
Delegation 174
Not a Substitute for the Licensed
Nurse 174
Nurse Aide Registry 175
Prohibitions & Limitations 175
Training 174

V

Veterans Preference 108
Initial Appointment 109
Retention 109

Violation Point Count System 212
Dual Violation 212
Exemptions 212
Points Assessed 212
Points for Moving Traffic
Violations 212
Speeding Violation 212
Violation Point Count List 212
Vocational Law Enforcement Program
Certification
Administration
Advisory Board/Committee 103
POST Council Administrative
Rules 103
Waiver Requests 103